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No. 13]

NEW DELHI, JUNE 13—JUNE 19, 2004, SATURDAY/JYAISTHA 23—JYAISTHA 29, 1926

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों का छोड़कर) द्वारा जारी किए गये आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 4 जून, 2004

आ.अ. 29.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं. 6/99 में दिये गये झारखण्ड उच्च न्यायलय, रांची के तारीख 13-2-2004 के निर्णय को प्रकाशित करता है।

(निर्णय इस अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/झारखंड/(6/99)/2004]

आदेश से,

आनन्द कुमार, निदेशक (प्रशासन)—सह-प्रधान सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 4th June, 2004

O.N. 29.—In pursuance of Section 106 of the Representation of the Peoples Act, 1951 (43 of 1951), the

Election Commission hereby publishes Judgement dated the 13th February, 2004 of the High Court of Judicature at Jharkhand, Ranchi in Election Petition No. 6 of 1999.

IN THE HIGH COURT OF JHARKHAND AT
RANCHI

E.P. No. 6 of 1999(R)

Rajendra Prasad

....Petitioner

Versus

1. Sri Ravindra Kumar Pandey
2. Kartik Mahato
3. Kamal Das
4. S. H. Khan
5. Shiva Mahto
6. Sushma Devi
7. Karamchand Mahali
8. Bijay Prasad Mahto

...Respondents

For the Petitioner : Mr. V. P. Singh,
Sr. Advocate.

For the Respondents : M/s. Sat Prakash, Rajesh
Lala & B. K. Prasad,
Advocates.

68/13-2-2004

It has been submitted by Mr. V. P. Singh, learned counsel for the petitioner that the lower House of the Parliament stands dissolved for fresh election and in this view of the matter no useful purpose shall be served even if the petitioner prosecute this case further and this case has also become infructuous on that account. The learned counsel for the respondents does not dispute the contention advanced on behalf of the petitioner.

In view of the submissions of Mr. V. P. Singh, learned counsel for the petitioner and this case having been become infructuous, it is hereby dismissed as infructuous.

Sd/-

VISHNUDEO NARAYAN
[No. 82/JKD/(6/99)/2004]

By Order,
ANAND KUMAR, Director (Admn.)-cum-
Principal Secy.

नई दिल्ली, 4 जून, 2004

आ.अ. 30.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) को धारा 106 के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं. 3/99 में दिये गये उच्च न्यायालय, पटना के तारीख 29-1-2004 के निर्णय को प्रकाशित करता है।

(निर्णय इस अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/बिहार/(3/99)/2002]

आदेश से,

आनन्द कुमार, निदेशक (प्रशासन)—सह-प्रधान सचिव

New Delhi, the 4th June, 2004

O.N. 30.—In pursuance of Section 106 of the Representation of the Peoples Act, 1951 (43 of 1951), the Election Commission hereby publishes Judgment dated the 29th January, 2004 of the High Court of Judicature at Patna in Election Petition No. 3 of 1999.

ELECTION PETITION NO. 3 OF 1999

In the matter of an application under Sections 80, 80(A) and 81 of the Representation of Peoples Act, 1951

Anand Mohan

...Petitioner

Versus

1. Md. Anwarul Haque
2. Ram Kailash Singh

3. Sulabh Kumar Singh
4. Karimuddin Haidar Khan
5. Mohan Sah
6. Baran Ram

7. Bimal Kumar Singh ...Respondents

For the Petitioner : M/s. S. B. K. Mangalam.

For the Respondent : M/s. S. N. P. Sharma and
No. 1 Amrendra Kumar Singh.

PRESENT :

The Hon'ble Mr. Justice Manohar Lal Visa

M. L. VISA, J.—By this election petition filed under sections 80, 80(A) and 81 of the Representation of Peoples Act, 1951 (hereinafter referred to as 'the Act'), Anand Mohan, election petitioner has challenged the election of returned candidate Md. Anwarul Haque, respondent No. 1, who has been declared elected from 12, Sheohar Parliamentary Constituency in the mid-term Parliamentary Election, 1999 (hereinafter referred to as the 'Election in question') held on 03-10-1999 and has prayed for setting aside the election of respondent No. 1, recounting of votes and on the basis of said counting declaring the petitioner as returned candidate in the election in question.

2. The case of petitioner, in short, is that the District Magistrate, Sitamarhi-cum-Returning Officer of 12, Sheohar Parliamentary Constituency issued Notification on 07-09-1999 for mid-term Election of Parliament, 1999 in 12, Sheohar Parliamentary Constituency as per the following programme :—

- (i) Last date for filing of nomination paper—14-9-1999.
- (ii) The date for scrutiny of nomination paper—15-9-1999.
- (iii) The last date of withdrawal of candidate—17-9-1999.
- (iv) The date of poll (if election is contested)—3-10-1999.
- (v) The date of counting—6-10-1999.
- (vi) The last date when election process is to be concluded—10-10-1999.
- (vii) The date of declaration of result—07-10-1999.

3. Altogether ten candidates filed nomination papers before the Returning Officer and out of them nomination paper of one candidate Shri Hari Kishore Singh was rejected and after scrutiny, nomination papers of nine candidates were found valid and were accepted by the Returning Officer but thereafter one another candidate Ijharul Haque withdrew from the field and only eight

candidates including the petitioner and respondent No. 1 contested the election. Petitioner was nominee of Bihar People's Party and respondent No. 1 was nominee of Rashtriya Janata Dal. According to petitioner, the instructions of Election Commission of India were flagrantly violated during the counting because of the partisan attitude of the Returning Officer who was favouring respondent No. 1, and Assistant Returning Officers did not even bother to take care of the fact that in initial counting how many votes had been polled according to Form-16, Part-I and how many votes, in fact, had been counted and this resulted in gross illegalities that on many polling stations there was difference in the actual votes polled there according to Form-16, Part-I and those counted at the time of initial counting as per Form-16, Part-II. According to Form-16, Part-I for Booth No. 2 in respect of Dhaka Assembly Constituency Segment, 540 votes were polled but at the time of initial counting only 340 votes were counted, for Booth No. 209, 450 votes were polled but 390 votes were counted, for Booth No. 255 no vote was polled but 360 votes were counted, for Booth No. 256, 590 votes were polled but 609 votes were counted, for Booth No. 157, 659 votes were polled but 650 votes were counted, for Booth No. 239, 300 votes were polled but 249 votes were counted. According to the petitioner on several other booths of this Dhaka Assembly Constituency Segment there is apparent difference in between the number of votes actually polled at the polling stations and the number of votes counted in initial counting and such irregularities have been committed in all the Assembly Constituency Segments affecting thousands of votes which vitiated the counting.

4. The Returning Officer made drastic change in the counting of votes of Booth Nos. 7, 20, 52, 57, 62, 88, 101, 120, 127 and 154 of Dhaka Assembly Constituency Segment and arranged a total of 1435 votes in favour of respondent No. 1 from the said booths and in fact, there is much difference between the number of votes actually polled on the aforementioned booths and the number of votes counted against the said booths at the time of initial counting. Shri Mani Bhushan Kumar, a worker of Bihar Peoples Party filed requisition on 11-10-99 to obtain certified copies of entire Form-16, Part-I of Dhaka Assembly Constituency Segment but the Returning Officer failed to supply such copies for Booth Nos. 7, 20, 52, 57, 62, 88, 101, 120, 127 and 154 on the ground that ballot papers account of said booths were not available. According to the petitioner, if ballot papers account of abovementioned booths were not available then on what basis the counting was made on these booths and it shows that bungling was done on the part of Returning Officer also.

5. For Ghorasahan Assembly Constituency Segment, according to the petitioner, for Booth No. 158, 639 votes were polled but in initial counting only 338

votes were counted, for Booth No. 51, 377 votes were polled but at the time of initial counting the ballot box of this booth was not brought to the counting table and its ballot papers were not counted in initial counting, for Booth No. 111, 460 votes were polled but 466 votes were counted, for Booth No. 134, 600 votes were polled but 590 votes were counted, for Booth No. 70, 200 votes were polled but 309 votes were counted, for Booth No. 78, 480 votes were polled but 619 votes were counted. The case of petitioner is that for Ghorasahan Assembly Constituency segment the number of votes counted does not tally with the number of votes polled on the booths as per the apparent differences in Form-16, Part-I and Part-II and the number of such votes were counted contrary to the entries made in Form-16, Part-I and would exceed a figure of more than five thousand if the Returning Officer will make available copies of Form-16, Part-I Booth Nos. 61, 112, 129, 138, 183, 188 and 198 of this segment and in spite of filing requisition by Mani Bhushan Kumar, a worker of election petitioner, copies of Form-16, Part-I of these booths were not supplied.

6. For Belsand Assembly Constituency Segment, the case of petitioner is that for Booth No. 38, 575 votes were polled but 584 votes were counted at the time of initial counting, for Booth No. 71, 870 votes were polled but 860 votes were counted, for Booth No. 101, 432 votes were polled but 482 votes were counted. In this way at some booths either the number of votes actually counted was less than the number of votes polled or the number of votes counted was excess than the number of votes polled and when certified copies of Form-16, Part-II of a number of booths of different Assembly Constituency segments were required by filing requisition, the Returning Officer did not supply such copies in respect of Booth Nos. 7, 20, 52, 57, 62, 88, 101, 120, 127 and 154 of Dhaka Assembly Constituency segment, Booth Nos. 61, 112, 129, 138, 183, 188 and 198 of Ghorasahan Assembly Constituency segment, Booth Nos. 2, 69, 97, 98, 110 and 190 of Belsand Assembly Constituency Segment, Booth No. 247 of Sheohar Assembly Constituency Segment, Booth Nos. 66, 75, 88, 93, 121, 128, 166, 224 and 269 of Bathnaha Assembly Constituency Segment and Booth Nos. 5, 9, 122, 127, 133, 137, 155, 160, 172, 173, 198, 222 and 226 of the Majorganj Assembly Constituency segment on the ground that ballot papers account of such booths were not available (Annexure-6 and 6/A). According to the petitioner, he is in possession of certified copies of initial counting of Assembly Segments except Bathnaha and Majorganj which shows that result of initial counting was not properly maintained in statutory Form-20 and it further shows that records of initial counting of Bathnaha and Majorganj Assembly Constituency segments were not properly maintained at all and therefore, certified copies in spite of demand were not supplied and because of these irregularities more than

50 thousand votes have been illegally counted in favour of respondent No. 1.

7. About final counting the case of petitioner is that at the time of final counting his counting agents were present and they took their seats as per the sitting arrangement and besides his counting agents, petitioner himself and his election agent were also present throughout the final counting and they collected table wise and round wise figures of final counting from all the tables through counting agents of all the six Assembly Constituency segments of Sheohar Parliamentary Constituency and counting agents had also maintained their own records of counting. The petitioner from paras 72 to 103 has given the details of the votes polled by him in different rounds of final counting at different counting tables of Majorganj and Bathnaha Assembly Constituency segments as per information received by him through his counting agents. For example, according to the petitioner, as per information received by him through his counting agents in the first round of final counting of Majorganj Assembly Constituency segment which was held on 14 tables he received 687 votes at table No. 1, 739 votes at table No. 2, 686 votes at table No. 3, 703 votes at table No. 4, 624 votes at table No. 5, 614 votes at table No. 6, 835 votes at table No. 7, 787 votes at table No. 8, 751 votes at table No. 9, 639 votes at table No. 10, 740 votes at table No. 11, 879 votes at table No. 12, 699 votes at table No. 13 and 482 votes at table No. 14 out of 1000 votes counted in first round at each of the counting tables. In this way in the paragraphs mentioned above the petitioner has given the details of votes polled by him as per information received through his counting agents at different tables in 9 rounds of counting held for Majorganj Assembly Constituency segment and 10 rounds of final counting held for Bathnaha Assembly Constituency segment. In his petition, he has given the names of counting agents who were deputed by him on different counting tables during the final counting of Majorganj and Bathnaha Assembly Constituency segments. His further case is that after the conclusion of final counting of Majorganj Assembly Constituency Segment he was leading over his nearest rival respondent No. 1 by a margin of 48,392 votes because he had secured 81,123 votes whereas respondent No. 1 had secured 32,715 votes but in the round wise result sheets votes in his favour were shown much less than the votes actually secured by him and round wise result sheets were manufactured by the Assistant Returning Officers at the dictate of the Returning Officer and on the basis of manufactured round wise result sheets final result sheet was prepared and respondent No. 1 was declared elected. Similarly, about Bathnaha Assembly Constituency segment the case of petitioner is that after conclusion of 10th round of final counting he was leading over his nearest rival respondent No. 1 by a margin of 2,643 votes in that segment. It is further alleged

by the petitioner that 6th round of final counting of Bathnaha Assembly Constituency segment was concluded at 9 AM on 7-10-99 and thereafter 7th round was started which concluded at 10.50 AM on 7-10-99 and thereafter 8th round was started but the same was surprisingly concluded at 11 AM on 7-10-99 meaning thereby that within 10 minutes of its start which itself shows that counting was not done fairly and properly. According to the petitioner, in view of the direction of the Election Commission of India, contained in letter dated 1-10-99, the Returning Officer was required to make public announcement of the result of each round of counting and further direction was that observers should certify the correctness of the counting process of each round and candidate should also likewise certify the same but it was not complied by the Returning Officer for an oblique and mala fide motive and the Returning Officer was neither making public announcement with respect to round wise result nor the petitioner or the other contesting candidates or observers were asked by the Returning Officer to certify the correctness of result of each round and the final result sheet prepared by the Returning Officer in Form-20 of 69, Majorganj Assembly Constituency Segment on the basis of which the result has been declared does not even contain the signature of the Assistant Returning Officer (Annexure-7) and counting of last round of Majorganj Assembly Constituency segment also does not contain signature of Assistant Returning Officer and same is the case with the final result sheet of Ghorasahan Assembly Constituency segment (Annexure-8). It is further case of petitioner that there is apparent difference in between the figures entered in Part-I of Form-16 and final result sheet prepared in Form-20. For Ghorasahan Assembly Constituency Segment as per the entries made in Part-II of Form-16 number of total votes counted is 10,94,84 whereas as per the final result sheet prepared in Form-20 the total number of votes is 1,09,772 and in this way there is difference of 288 votes. For Dhaka Assembly Constituency Segment the number of votes counted as per entries made in Part-II of Form-16 is 1,36,514 whereas as per the entry made in Form-20 the number of votes counted in final counting is 1,36,684 and for Sheohar Assembly Constituency Segment the total number of votes polled according to entries in Form-16, Part-II is 1,15,762 whereas, as per the entry made in Form-20 it is 1,15,848. About Bathnaha and Majorganj Assembly Constituency segments the difference between the votes counted in initial counting and final counting as per entries made in Part-II of Form-16 and Form-20 is proportionally very high and for this reason copies of Part-II of Form-16 of different booths of those Assembly Constituency segments could not be supplied in spite of filing requisitions on the ground that the same were not available. According to the petitioner, despite the aforesaid irregularities he was leading over his nearest rival respondent No. 1 in each and every round and he maintained his lead till 9th round

of final counting but at the conclusion of 10th round of final counting of Bathnaha, the only Assembly segment in which the counting of votes took place in 10 rounds the Returning Officer suddenly announced that the petitioner was trailing behind the respondent No. 1 but no margin of votes was announced on the Public Address System and when sudden announcement of Returning Officer shocked the petitioner, he filed an application before him on 7-10-99 for recounting of votes before declaration of final result (Annexure-9) and he also sent Fax Message to Election Commission of India and Chief Electoral Officer, Bihar, Seeking their intervention in the matter but Returning Officer arbitrarily rejected his request of recounting on the ground that since he has not certified the round-wise result sheets, therefore, in view of the direction of the Chief Electoral Officer, Bihar vide letter dated 4-10-1999 no recount request can be entertained after counting was over but while seeking instruction from the Election Commission of India for declaration of final result of election in question the Returning Officer suppressed the ground of rejection of petitioner's request for recounting and he communicated to the Election Commission of India that since representation of petitioner was vague and not specific, therefore, it had been rejected. According to the petitioner, because of large scale bungling and irregularities he was defeated otherwise he had got largest number of votes but for the said irregularities committed during the counting he was not declared elected.

8. About the motive the case of petitioner is that when on 15-4-1999 Bhartiya Janta Party led coalition Government lost the confidence of motion, Lok Sabha was dissolved giving rise to mid-term poll and the ruling State Government in the State of Bihar led by Smt. Rabri Devi under the active guidance of her husband Shri Laloo Prasad Yadav, Ex-Chief Minister and Rashtriya Janta Dal President started mass transfer of Administrative Officers in the State of Bihar just before issuance of notification by the Election Commission of India and main purpose behind such mass transfer of Administrative Officers was to post officers loyal to the Ruling Party in the State for furtherance of election prospects of Rashtriya Janta Dal candidates to secure their victory and in this process Sri Ram Nandan Prasad who was holding the post of District Magistrate, Sitamarhi from 9-12-1997 to 19-2-1999 and who was transferred to some other place on 20-2-1999 was again posted as District Magistrate, Sitamarhi on 30-4-1999 i.e. when it became clear that mid-term parliamentary election would be held. According to the petitioner, Ram Nandan Prasad started his service career as a member of Bihar Administrative Service and his name was recommended for promotion in the I.A.S. cadre by State Government and at that time Rashtriya Janta Dal President Shri Laloo Prasad Yadav was Chief Minister of Bihar and for this reason Shri Ram Nandan Prasad was

obliged to him and because District Magistrate happens to be the Returning Officer of 12-Sheohar Parliamentary Constituency, therefore, he was purposely brought here. About himself the petitioner has stated that he is President of Bihar Peoples Party, an allies of the National Democratic Alliance and he had supported the Government led by this alliance when 'No Trust Motion' was tabled against it and therefore, President of Rashtriya Janta Dal was adamant to get him defeated and he got the security provided to the petitioner withdrawn against which petitioner sent Fax Message to Election Commission of India (Annexure-1 and 1/A). Since the petitioner was contesting third consecutive parliamentary election from the same Constituency he was not only known to the voters rather he was popular amongst the voters irrespective of their caste and religion and since the Returning Officer was hostile to him at the behest of Rashtriya Janta Dal President, he, therefore, from the very start of process of election adopted every means for furtherance of election prospects of respondent No. 1 who was candidate of Rashtriya Janata Dal. At the time of identification of booths as sensitive booths list of such booths submitted by petitioner was turned down whereas, list submitted by respondent No. 1 was accepted and majority of the booths demanded by him were declared sensitive booths. Even on the date of poll the Presiding Officer of Booth No. 12 of Bathnaha Assembly Constituency segment submitted a report to the Returning Officer regarding capturing of booth by anti-social elements and recommended for re-poll and it was not ordered by the Returning Officer because he thought that the voters of that booth would support the petitioner. The petitioner had taken the certified copies of some of the reports of Presiding Officer of this Booth (Annexure-2). On the contrary, on the basis of vague report of Patrolling Magistrate, repolling at Booth No. 66 of Bathnaha Assembly Constituency segment was ordered. Shri Rakesh Kumar Singh, Officer-in-charge of election office of the petitioner, upon receiving large scale complaints about massive irregularities by the supporters of respondent No. 1, sent a series of complaints to the Chief Election Commission with a copy to Chief Electoral Officer, Bihar and the Returning Officer (Annexure 3 series) demanding re-poll on a number of booths but the Returning Officer turned down his request without assigning any reason and since the Returning Officer was hostile to the petitioner, therefore, he was suppressing all the relevant informations to the petitioner and at the same time he gave most favoured treatment to respondent No. 1. In the selection of counting supervisors and counting assistants the Returning Officer adopted discriminatory conduct and he ignored the instructions of Election Commission of India for drawing counting assistants from officers of a comparatively higher level and counting supervisors from Gazetted Officers and Returning Officer went to the extent that one relative of respondent No. 1 who was posted at

Sitamarhi in the capacity of Additional Collector was appointed as the Assistant Returning Officer of the Bathnaha Assembly Constituency segment. Since Election Commission of India was aware with the election offences, therefore, with a view to maintain a transparency and fairness in the process of counting and to hold a fair counting of votes, issued an instruction vide letter No. 470/9 (INST) J.S. II dated 1-10-1999 addressed to the Chief Electoral Officers of all the States and Union Territory and all Observers through Chief Electoral Officer concerned directing them to ensure that instructions of Election Commission of India regarding counting to votes are being meticulously followed and duly observed by all concerned and through its letter the Election Commission of India issued further instructions regarding counting of votes and directed that during the process of counting, result of the counting of each round must be announced publicly and observers should be asked to certify the correctness of the counting process of each round. By this letter it was further instructed that while preparing final result sheet in Form-20 every care must be taken to ensure that result is reflected absolutely and correctly in respect of each of the candidate as per relevant part-II of Form-16 and the Commission directed that there should not be any mistake in incorporation of any figures in Form-20 and Form-16 and after receipt of these instructions the Returning Officer of 43, Gaya (SC)/44, Chatra (PC) sought some clarification from the Chief Electoral Officer, Bihar who directed that in absence of the candidates, their counting agents should certify the round-wise result sheet. The Returning Officer was required to announce clearly before start of counting about this new instruction of the Commission and he was further directed to make it clear to the candidates or their counting agents that each round is to be certified by them failing which no recount request will be entertained after the counting was over at the end. The Returning Officers were further directed to give full knowledge of this provision to the candidates or their counting agents (Annexure-5). The case of the petitioner is that with ulterior, mala fide and oblique purposes the aforesaid instructions of Election Commission of India as laid down in letter dated 1-10-99 communicated to the Returning Officer vide Memo No. 1928 A/CEO dated 2-10-99 of the Chief Electoral Officer and clarification issued vide letter No. 1960 dated 4-10-99 were neither announced by the Returning Officer before the start of counting process nor any copy of the aforesaid instructions was served to the petitioner by the Returning Officer at any point of time and therefore, the Returning Officer suppressed this important instruction to the election petitioner although election petitioner and his counting agents were present but still information of aforesaid instructions either orally or in writing was not given to any of them and there was no announcement to this effect on public address system before start of counting. The petitioner has prayed for setting aside the

election of respondent No. 1 and for recounting of votes and on the basis of such recounting declaring him as returned candidate from 12-Sheohar Parliamentary Constituency for the election in question.

9. Md. Anwarul Haque, respondent No. 1, has appeared and has contested the case by filing written statement stating therein that the election petition is not maintainable, election petitioner has made bald and vague allegations of commission of irregularities and illegalities in the counting of ballot papers without disclosing contemporaneous and supporting documents and election petition is fit to be dismissed summarily under Section 86(1) of the Act for non compliance of mandatory provisions of Sections 81, 82 and 117 of the Act. The further case of respondent No. 1 is that there are many discrepancies in the original election petition and the copy of election petition served on him. The major portion of affidavit and verification in the copy of election petition served on him is blank and election petition does not bear the challan number and the date on which the security money was deposited in this Court and these discrepancies misled him and he became unable to give effective reply to the allegations made in the election petition. On the allegation of petitioner of mass transfer of Administrative Officers in the State by Government just before issuance of notification by the Election Commission of India in which process the Returning Officer of election in question was again posted at Sitamarhi as District Magistrate, the case of respondent No. 1 is that this allegation is baseless because transfer of Returning Officer of election in question was made as District Magistrate several months before issuance of notification for election and the State Government is not precluded from transferring any officer from one place to another after dissolution of Lok Sabha. About the withdrawal of security of petitioner, the case of respondent No. 1 is that contesting candidates generally misuse the security provided to them for the purpose of their election campaign and as such Election Commission of India is of the opinion not to provide security to contesting candidates in order to make the election free, fair and peaceful and despite all these, respondent No. 1 had no concern regarding provision of security to the petitioner. Respondent No. 1 has also denied the allegation of petitioner that Returning Officer was hostile to the petitioner and was rendering help to respondent No. 1. About the allegation of capturing of booth No. 12 of Bathnaha Assembly Constituency segment, the case of respondent No. 1 is that polling at this booth was peaceful and report about so-called disturbances at this booth by Presiding Officer in his diary contained in Annexure-2 of the Election petition was a cryptic report procured by the election Petitioner himself in order to get re-polling at this booth and petitioner has not furnished the adequate statement and material facts and full particulars to support his allegation of booth capturing and besides this, in course

of argument submitted by way of reply to the preliminary objection raised by respondent No. 1 the petitioner did not make any allegation of corrupt practices and confined the argument only on the basis of commission of irregularities and illegalities in the counting of ballot papers and this court also accepted the contention of petitioner that election petition does not contain allegation of corrupt practices and therefore, affidavit in Form-25 was not required. According to respondent No. 1 polling at booths mentioned in para 24 of election petition was peaceful and therefore, the Returning Officer was perfectly justified in not ordering for re-polling at these booths as demanded by petitioner. About allegation of petitioner that counting supervisors and counting assistants were appointed against the instructions issued by the Election Commission of India, the case of respondent No. 1 is that the allegation is quite vague because petitioner has not named the counting supervisors and counting assistants who were appointed against the aforesaid instructions. Respondent No. 1 has also denied that allegation of election petitioner that his relative was appointed as one of the Assistant Returning Officers because, according to him, no Assistant Returning Officer who was his relation was appointed by Returning Officer and besides this, Returning Officers are appointed by the Election Commission of India and because counting of ballot papers was done strictly in accordance with law, the question of receiving any help by respondent No. 1 from any Assistant Returning Officers or Returning Officer does not arise and allegation of petitioner in this respect is quite vague and for this purpose the election petitioner has not named the Assistant Returning Officer who, according to him, was relation of respondent No. 1. Respondent No. 1 has further denied the allegation of petitioner that result of counting was not announced after each round of counting. According to him, at the conclusion of each round of final counting result was announced by loudspeaker and election agents and counting agents were at liberty to raise any grievance regarding the counting of that round and because contesting candidates and their agents were satisfied about the counting of each round they did not raise any grievance and instructions of Election Commission of India mentioned in paragraphs 29, 30, 31, 32, 33, 34 and 35 of the election petition were communicated to the Returning Officer and copy of such instructions was provided to the candidates by him. According to the respondent No. 1, petitioner and his counting agents were present throughout the process of counting but neither the petitioner nor any of his counting agents raised any grievance regarding counting of ballot papers and they were fully satisfied that counting was made as per law.

10. About the allegation of petitioner as to initial counting of ballot papers, case of respondent No. 1 is that allegations are incorrect, hypothetical and after-

thought and not supported by any contemporaneous documents and whatever ballot papers were found from the ballot boxes of different booths were counted and final result sheet was prepared on the basis of counted ballot papers. The seals of all the ballot boxes were found in tact. Respondent No. 1 in para-29 has admitted that ballot papers account in Form-16, Part-II for booth Nos. 2, 209, 157, 239, 7, 20, 52, 62, 88, 101, 120, 127 and 154 of Dhaka Assembly Constituency segment, for booth Nos. 51, 158, 111, 134, 70, 78, 61, 112 and 188 of Ghorasahan Assembly Constituency segment, for booth Nos. 5, 122, 127 and 198 of Majorganj Assembly Constituency segment and ballot papers account in Form-16, Part-I and Part-II for booth No. 255 of Dhaka Assembly Constituency segment, for booth Nos. 138, 183, 198 for Ghorasahan Assembly Constituency segment and for booth Nos. 133, 137, 155, 160, 172, 173 and 226 of Majorganj Assembly Constituency segment are not available. According to him, under such circumstances it is not possible to locate discrepancies of the number of ballot papers in between the ballot papers account in Form-16, Part-I and Part-II in respect of the aforesaid booths and so allegation of petitioner is without any basis. About allegation made in para-40 of election petition case of respondent No. 1 is that these allegations are incorrect because according to the ballot papers account in Form-16, Part-I for Booth No. 209 of Dhaka Assembly Constituency segment only 390 votes were polled so the allegation of petitioner that 450 votes were polled at this booth is incorrect. About Booth No. 255 of Dhaka Assembly Constituency segment case of respondent No. 1 is that the allegation of petitioner that at this booth no vote was polled as per Part-I of Form-16 but at the time of counting 360 votes were counted is not correct because ballot papers account in Form-16, Part-I and Part-II of this booth are not available and similarly allegation of petitioner in para-42 that for booth No. 256 of Dhaka Assembly Constituency segment 590 votes were polled as per ballot papers account in Form-16 but 609 votes were counted is also not correct because as per ballot papers account in Form-16, Part-I 590 votes were polled which were actually found in ballot boxes and the same has been indicated in the ballot paper account in Form-16, Part-II. About the allegation for booth No. 239 of Dhaka Assembly Constituency segment that 300 votes were polled as per entry made by the Presiding Officer in Part-I and 249 votes were counted in initial counting. The case of respondent No. 1 is that as per ballot paper account in Form-16, Part-I, 249 votes were polled which were counted and therefore there is no discrepancy. About the allegation for booth No. 157 of Dhaka Assembly Constituency segment, booth No. 158 of Ghorasahan Assembly Constituency segment respondent No. 1 has denied the allegation of petitioner that in initial counting votes were not counted as per statement shown in Form-16, Part-I because according to respondent No. 1 Form-

16, Part-II of this booth is blank. About booth No. 2 of Dhaka Assembly Constituency segment respondent No. 1 has denied the allegation of petitioner as made out in para 39 of the election petition on the ground that ballot paper account in Form-16, Part-II is not available. The allegation of petitioner that for booth No. 209 of Dhaka Assembly Constituency segment 390 votes were counted against 450 votes mentioned in Form -16, Part-I has also been denied by respondent No. 1 on the ground that Form-16, Part-I shows that only 390 votes were polled and not 450 as stated by the petitioner. About the allegation in respect of discrepancy in the number of ballot papers mentioned in Part-I of Form-16 and the number of votes actually counted in initial counting for booth Nos. 7, 20, 52, 57, 62, 88, 101, 120, 127 and 154 of Dhaka Assembly Constituency segment case of respondent No. 1 is that because Form-16, Part-II of these booths are not available, therefore, the story of discrepancy as set out by petitioner in respect of votes actually polled and votes actually counted for these booths is imaginary and allegation of petitioner that ballot boxes of booth No. 51 of Ghorasahan Assembly Constituency segment were not brought in the counting hall is also imaginary because, in fact, 438 ballot papers were found in the ballot boxes and same were counted. About Booth Nos. 61, 112 and 188 of Ghorasahan Assembly Constituency segment the case of respondent No. 1 is that Form-16, Part-I in respect of these booths is not available and for Booth No. 129 of this segment, Part-I and Part-II of Form-16 both are not available from which it is clear that 526 votes were polled which were counted for this booth and the allegation of petitioner that if the Returning Officer will make available a copy of Form-16 of Booth Nos. 61, 112, 129, 138, 183, 188 and 198 for this segment the entries made in Form-16, Part-II would exceed the figure of 5000 votes is quite imaginary and without any basis.

11. The further case of the petitioner is that there might have been some clerical or arithmetical error by the Presiding Officer in preparing ballot papers account in Form-16, Part-I. According to him, ballot papers account in Form-16, Part-I prepared by the Presiding Officer of Booth No. 70 of Belsand Assembly Constituency segment is not correct and such error is also occurred for booth Nos. 169 and 178 of this segment. Denying the allegation of petitioner made in para 60 of election petition that Returning Officer reported that ballot papers account in relation to a number of booths of different Assembly Constituency segments details of which were given in this para are not available, the case of respondent No. 1 is that for Booth No. 129 of Ghorasahan Assembly Constituency segment, Booth No. 222 of Majorganj Assembly Constituency segment and all the booths of Sheohar Assembly Constituency Segment the number of which has been given in this para, ballot papers account in Form-16, Part-I and Part-II are

available and it is just possible that petitioner himself is responsible for getting the ballot papers account of several booths removed for the purpose of his election petition.

12. The further case of respondent No. 1 is that petitioner in para 70 of election petition has stated that his counting agents were maintaining their own records of counting but he has not annexed those records of his counting agents which suggests that the counting agents were not maintaining any record and assertion of petitioner that he received particular number of votes on particular table in particular round of final counting is quite imaginary which he has stated for the purpose of this election petition. Respondent No. 1 denying the allegation of petitioner made in different paras of his election petition showing the number of votes polled by him on different tables in different rounds of final counting of different Assembly Constituency segments as per information received by him from his counting agents has given the actual figures of votes polled by petitioner at different booths in different rounds of different Assembly Constituency segments which are mentioned in paras 58 to 65. According to respondent No. 1, declaration of result was made at the end of each round of counting of votes and result sheets prepared by the officials contain correct figures and the question of manufacturing the documents by the Returning Officer does not arise. The petitioner and his election agent were fully satisfied with the counting of ballot papers and therefore the petitioner did not raise any protest and after losing election the petitioner has levelled false allegation against the officials and he has wrongly mentioned the figures of votes secured by him at different counting tables in different rounds of final counting and those figures do not tally with the figures of votes as mentioned in the final result sheet and he has inflated the figure of votes the details of which have been given in paras 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 92 and 94. Respondent No. 1 in para 95 has admitted that petitioner was leading in two Assembly Constituency segments namely, Sheohar and Majorganj and in remaining four Assembly Constituency segments namely, Dhaka, Ghorasahan, Belsand and Bathnaha Respondent No. 1 was leading throughout the entire counting process and result of the counting of votes was made through public media and regarding putting of signature in token of grant of certificate either by the candidate or the election agent or by any counting agent was communicated to each to the contesting candidate by the Returning Officer vide Memo No. 640 dated 5-10-99 which is clear from the order sheet dated 6-10-99/7-10-99 maintained by the Returning Officer and in case any candidate declines to put his signature on the result sheet he should instead of blaming the officials or the Returning Officer congratulate himself for his inaction or negligence. According to the respondent No. 1, counting of ballot papers and

preparation of final result sheet was done properly and in accordance with law and prayer of petitioner for recount is frivolous, unreasonable and not containing material fact and Returning Officer was justified in rejecting the prayer of petitioner for recount and he has mentioned the reason for doing so in his relevant order sheets. Respondent No. 1 has prayed for dismissing the election petition with exemplary cost.

13. On the pleadings of the parties the following issues have been framed for due determination in this case:—

- (i) Whether the election petition as framed is maintainable?
- (ii) Whether the election petitioner has got valid cause of action to sue?
- (iii) Whether any illegality or irregularity as alleged in the election petition was committed during the process of counting of ballot papers? If so, whether the result of election has been materially affected as claimed by the election petitioner?
- (iv) Whether the election petition is fit to be dismissed under section 86(1) of Representation of People Act, 1951 for non-compliance of mandatory provisions of sections 81, 82 and 117 of the said Act?
- (v) Whether the election petition is fit to be dismissed summarily under Order 7 Rule 11 of the Code of Civil Procedure for not disclosing any cause of action in absence of adequate statements of material facts?
- (vi) Whether, in fact, election petitioner had secured majority of valid votes in the election in question? If so, whether the election petitioner is entitled to be declared as duly elected candidate in place of respondent No. 1 after inspection, scrutiny and recounting of ballot papers?
- (vii) Whether the election petitioner is entitled to the reliefs as claimed for?
- (viii) To what other relief or reliefs, if any, the election petitioner is entitled to get?

14. Issue Nos. (iii) and (vi) being the main grounds have been first taken up together for determination.

15. The case of petitioner is that in initial counting more or less ballot papers were counted in place of ballot papers actually found in ballot boxes of different booths and result of initial counting was not properly maintained and for this reason when certified copies of Form-16,

Part-II of a number of different booths of different assembly constituency segments were sought by filing requisitions which were not supplied in respect of some booths on the ground that ballot papers account of those booths was not available and more than 50,000 votes have been illegally counted in favour of respondent No. 1. About final counting the case of petitioner is that the correct figures of votes secured by him have not been mentioned in round-wise result sheets and he was shown to have secured less votes than actually secured by him in round-wise result sheets prepared for different assembly constituency segments and this was altered by the Assistant Returning Officers at the dictate of the Returning Officer and on the basis of such wrong round-wise result sheets final result sheet was prepared and respondent No. 1 was declared elected. In order to prove his case the petitioner has examined 33 witnesses including himself.

16. Anand Mohan (PW-1) is the petitioner. He, in his evidence, has stated that he contested the election as a candidate of Bihar Peoples Party and although some other candidates from other political parties also contested the election in question but main contest was between him and respondent No. 1 who was candidate of Rashtriya Janta Dal and at the final result he was shown to have secured 3,44,744 votes and respondent No. 1 was shown to have secured 3,47,279 votes. He has further said that there were six assembly constituency segments in the election in question and he had appointed his counting agents on all counting tables and he was himself present throughout the counting and some irregularities were committed in the counting of ballot papers but major irregularities were committed in the preparation of final result sheet. By giving figures of ballot papers which were actually counted in initial counting of some booths he has stated that these figures do not tally as per the report of Presiding Officers of those booths showing the number of votes polled. For example, he has said that for Booth No. 2 of Dhaka assembly constituency segment only 340 votes were counted whereas as per the report of Presiding Officer of this booth 540 votes were polled, for Booth No. 255 of this segment 360 ballot papers were counted but as per the report of Presiding Officer not a single vote was polled, for Booth No. 256 of this segment 609 ballot papers were counted against the report of Presiding Officer for 590 votes, for Booth No. 239 of this segment 249 votes were counted against the report of Presiding Officer for 300 votes, for Booth No. 157 of this segment 650 votes were counted against the report of Presiding Officer for 659 votes and similarly irregularities were committed in respect of Booth Nos. 7, 20, 52, 57, 88, 101, 120, 127 and 154 of the aforesaid segments and irregularities were thus committed in respect of total votes of 1435 and these irregularities are in addition to irregularities committed in other booths of same segment.

For Ghorasahan assembly constituency segment he has stated that for Booth No. 158, 338 votes were counted against the report of Presiding Officer for 639 votes, for Booth No. 111, 460 votes were counted against the report of Presiding Officer for 467 votes, for Booth No. 70, 309 votes were counted against the report of Presiding Officer for 200 votes. For Belsand assembly constituency segment he has said that for Booth Nos. 38 and 101, 9 and 50 more votes respectively were counted in addition to actual number of votes polled at these booths as per the report of Presiding Officer and for Booth Nos. 71, 178 and 213 of this segment, 10 votes in respect of each booth were counted less than the total number of votes polled and for Booth No. 169, 6 votes were counted less than the number of votes polled. He has further said that when he applied for certified copies of Form-16, Part-I, Part-II for the booths of Belsand assembly constituency segment he was not supplied certified copies on the ground that the same was not available. About the final counting he has said that on every counting table he had appointed his counting agents and there were mass irregularities at the time of final counting of ballot papers and the Returning Officer did not make him available the procedure of counting of ballot papers despite specific direction of Election Commission of India and later on he came to know that as per instructions dated 1-10-99 of the Election Commission of India, after every round of counting of ballot papers signatures of candidates of their election agents authorised by the candidates were required to be taken on the result sheet prepared at the end of the counting and election observer was also required to certify the correctness of the counting of each round of counting of ballot papers and the instruction further provided that after every round of counting result will be published publicly for the knowledge of all but no announcement was made regarding result of counting. After every round of counting signatures of candidates were not obtained and at the time of preparation of final result sheet his about 25,000 votes were shown in the number of votes polled by respondent No. 1 and in this way, his number of votes was decreased and number of votes of respondent No. 1 was increased. He has further said that in Majorganj assembly constituency segment he had polled 81,123 votes but in final result sheet only 70,000 votes were shown to have been polled by him and in this way he was shown to have secured about 10,000 less votes and respondent No. 1 who had polled about 32,000 and odd in this segment, in the final result sheet was shown to have secured about 42,000 votes. Similarly in Bathnaha assembly constituency segment he had secured 2643 more votes than the votes polled by respondent No. 1 but in the final result sheet he was shown to have secured less votes. He has further said that in the election in question final result sheet was first prepared and thereafter with the help of some AROs round-wise result sheets were prepared. He has added that in

Ghorasahan assembly constituency segment altogether 1,09,484 votes were polled in initial counting but in final result sheet 109772 votes have been shown, in Dhaka assembly constituency segment altogether 1,36,514 votes were polled in initial counting but in the final result sheet 1,36,684 have been shown and for Sheohar Assembly Constituency segment 1,15,762 votes were polled in the initial counting but in the final result sheet 1,15,848 votes have been shown. According to him, as per instruction there should not be any difference in initial counting and final counting. He has further said that after declaration of result of the election in question he filed petition for recounting of ballot papers before the Returning Officer with a copy to Chief Electoral Officer, Bihar and Election Commission of India but his application was rejected by the Returning Officer on the ground that he had not put signatures on the round-wise result sheets. He has further said that if irregularities would not have been committed in the initial counting of ballot papers and at the time of preparation of final result sheet he would have been declared elected. He has proved his application (Ext. 1). In cross examination he has admitted that in his aforesaid application he has not stated the details of irregularities committed in the initial counting of ballot papers and in preparation of final result sheet. He has further admitted that in the year 1995 he was candidate for Member of Bihar Legislative Assembly from 3 Assembly Constituencies but he lost the election in all the constituencies and in the year 2000 there were 20 candidates from Bihar Peoples Party in the election of assembly constituency but only one won the election. To a question that did he file a written complaint during the course of initial counting before the Returning Officer or Assistant Returning Officer alleging therein the irregularities committed in the initial stage of counting, he replied that he had sent complaint to Chief Election Commissioner, Election Commission of India on 7-10-99 in which he has stated about the partisan attitude of Election Observer and Returning Officer towards respondent No. 1 and not taking action on his complaint. In para-50 of his cross-examination he has stated that his counting agents at the table of ARO did not lodge any written complaint during the initial counting of ballot papers because no major irregularities were committed in initial counting and major irregularities were committed during preparation of final result sheet which was prepared earlier and thereafter round-wise result sheets were prepared which bear no signature of any candidates or some of the AROs. In para-51 of his cross-examination he has stated that in the final phase of counting of ballot papers he did not lodge any written complaint before Assistant Returning Officers and Returning Officer about major irregularities committed in the preparation of final result sheet but he made oral complaint before the Returning Officer but he did not listen to him. From para 56 to 61 he has admitted that in

Part-I and Part-II of Form-16 of Booth No. 256, 69, 97, 98, 190 and 247 the figure of ballot papers mentioned in both parts is same. In para-63 of his cross-examination he has admitted that except petition filed by him before the Returning Officer for recount of ballot papers he did not file any written complaint before the Returning Officer or Observer or Assistant Returning Officers because they were not ready to listen his complaints.

17. Sanjay Singh @ Sanjay Das (PW-2), Shashi Ranjan Singh (PW-3), Mukesh Kumar Singh (PW-4), Chandrika Singh (PW-5), Bhagya Narayan Singh (PW-6), Nand Lal Singh (PW-7), Amarnath (PW-8), Rajendra Singh (PW-9), Mukesh Bhushan Singh (PW-10), Amrendra Singh (PW-11), Pappu Singh (PW-12), Arbind Kumar Singh (PW-13), Ram Babu Singh (PW-14), Rakesh Kumar Singh (PW-15), Raj Narayan Singh (PW-16), Ramanand Singh (PW-17), Jai Chandra Singh (PW-18), Harendra Singh (PW-19), Bhagwat Saran Singh (PW-20), Arbind Singh (PW-21), Bishwanath Singh (PW-22), Ramesh Chandra Singh (PW-23), Ajay Singh (PW-24), Capt. Kaushalendra Singh (PW-25), Ranjan Kumar (PW-26), Sunil Kumar Singh (PW-27), Pappu Singh (PW-28), Shailendra Kumar Singh (PW-29), Upendra Bhagat (PW-30), Ajay Kumar Chaudhary (PW-31), and Sunil Kumar Singh (PW-32) have, in their evidence, have said that they were counting agents of petitioner in the counting of ballot papers of election in question. Some of them have said that they were counting agents of petitioner in the initial counting, some of them have said that they were counting agents in final counting and some of them have said that they were in initial as well as in final counting. These counting agents were at different counting tables for different assembly constituency segments the details of which they have given in their evidence. PW 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 28 and 32 have given the breakups of figures of votes secured by petitioner in different rounds of final counting held on their tables. They have further said that they used to note down the number of votes polled by petitioner but all of them have said that they have not preserved that paper. Admittedly, no paper has been filed by petitioner in this case. Rajendra Singh (PW-9) was also counting agent of petitioner. As per his evidence, he was at table No. 3 of Majorganj assembly constituency segment but he has not given the breakup of votes secured by petitioner in different rounds of final counting and has said that he does not remember the same but has given total number of votes polled by petitioner in all the 9 rounds held at his table which, according to him, was 6347. Similarly, Ram Babu Singh (PW-14), who was counting agent of petitioner in final counting of ballot papers at Table No. 3 of Bathnaha assembly constituency segment has said that total number of votes polled by petitioner was 5316 but only 4216 votes were shown. In

his cross examination he has admitted that he did not lodge any complaint that at his table less number of votes were shown for petitioner. Capt. Kaushalendra Singh (PW-25) has said that he was ARO of petitioner in the counting of ballot papers for Belsand Assembly Constituency segment. He has further said that he was at the table of Assistant Returning Officer but he did not see the Assistant Returning Officer preparing round wise result sheets. In cross-examination he has said that he had taken part in the election campaign of petitioner and he also advised the petitioner to file election petition and from 1994 to 1998 he was General Secretary of Bihar Peoples Party. In para-5 he has said that he does not know the whereabouts of petitioner. Sunil Kumar Singh (PW-27) has said that he was counting agent of petitioner at the table of ARO of Sheohar Assembly Constituency segment and figures of votes secured by candidates round-wise from different tables used to come to the table of ARO but no round-wise result sheet was prepared at the table of ARO. In cross-examination he has said that he did not lodge any written complaint before the ARO for non preparation of round-wise result sheets and he also did not lodge any written complaint before the Returning Officer regarding this. He has volunteered that he orally made complaint to Assistant Returning Officer for non-preparation of round-wise result sheets and when he did not listen to him he informed the election agent of petitioner but he did not advise him to lodge any written complaint regarding non-preparation of round-wise result sheets by Assistant Returning Officer. In para-5 he has said that he is a member of Bihar Peoples Party since 1998 and he had taken part in the election campaign of petitioner in the election in question. Shailendra Kumar Singh (PW-29) has said that he was counting agent of petitioner in the final counting and he was at the table of ARO of Majorganj assembly constituency segment but ARO was not preparing round-wise result sheet and he was not making announcement after every round of counting declaring the number of votes secured by different candidates. Ajay Kumar Chaudhary (PW-31) has said that he was counting agent of petitioner in the initial counting of ballot papers and he was at table No. 1 of Belsand assembly constituency segment and for booth No. 71 in the ballot boxes 870 votes were found which was the figure mentioned in the ballot papers account prepared by the Presiding Officer of that booth but in initial counting 860 votes were shown and similarly for booth No. 169, in the ballot boxes 485 votes were found as per the report of Presiding Officer but only 479 votes were shown in the initial counting. In para-6 of his cross-examination he has admitted that he did not ask for ballot paper account prepared by the counting staff in Part-II of Form-16 for the reason that ballot papers actually found in the ballot boxes of booths tallied with the number of votes shown to have been polled at the booths.

18. Rakesh Kumar Singh (PW-33) was the incharge of election office of petitioner and he has said that as incharge of election office his job was to look after the problems of petitioner concerning the election and he used to correspond with the election officers and also used to meet the Returning Officer regarding problems and Returning Officer was biased with the petitioner and he never cared to listen the problems of petitioner. He has further said that on the date of polling also he sent written complaint through Fax to Returning Officer about the booth capturing by the workers of respondent No. 1 and respondent No. 1 himself but Returning Officer did not take any action on his complaint and he did not cancel the polling of any booth about which he had made complaint but on the other hand he ordered re-polling of those booths for which respondent No. 1 made complaint. In his cross-examination he has said that he was not present at those booths about the capturing of which by the workers of respondent No. 1 and respondent No. 1 himself, he had made complaint to Returning Officer.

19. On behalf of respondent No. 1, altogether 87 witnesses have been examined. Anwarul Haque (RW-87) is respondent No. 1 himself. In his evidence, he has said that he was a contesting candidate in the election in question and after election he was declared elected but petitioner has challenged his election by stating false and wrong facts in the election petition. He has denied the allegations of petitioner made in the election petition that for some booths in initial counting correct number of votes found in the ballot boxes was not recorded and in recording so, more or less ballot papers than actually found in ballot boxes were stated. He has further stated that counting was made in two stages, initial and final, and in initial counting ballot box or boxes of a booth used to come on counting tables in round wise and after seeing the seals of those boxes by different counting agents box or boxes used to be opened and taking out the ballot papers from the ballot boxes, bundles of ballot papers, each bundle containing 25 ballot papers, used to be prepared and then those bundles used to be sent to the table of ARO and from there used to be kept in a drum and in final counting 40 such bundles used to be sent to every counting table in every round and thereafter those bundles used to be opened and ballot papers candidate-wise used to be sorted out and after sorting out, ballot papers used to be kept in pigeon holes meant for candidate and thereafter ballot papers candidate-wise used to be counted and bundles used to be prepared, each bundle containing 25 ballot papers and thereafter bundles used to be sent to the table of ARO. He has said that counting was held properly and has denied that Shri S. I. Tauheed, the then ADM (Reliefs) who was ARO of Bathnaha was related to him. He has proved the copy of election petition received by him, which is marked Ext. A.

20. Md. Sarffudin (RW-1), Bijendra Kumar Yadav (RW-2), Uday Kumar Singh (RW-3), Ganesha Devi (RW-4), Gajadhar Paswan (RW-5), Sunil Kumar Singh (RW-6), Md. Shamim (RW-7), Md. Mustakh Ahmad (RW-8), Md. Musaleuddin (RW-9), Md. Nuruddin (RW-10), Nanhe Ansari (RW-11), Md. Mustafa (RW-12), Mahesh Prasad Yadav (RW-13), Sheoji Singh (RW-14), Lal Kishore Chaudhary (RW-15), Baleshwar Prasad Yadav (RW-17), Md. Jamil Akhtar (RW-18), Bholi Jha (RW-20), Md. Ekramul Haque (RW-21), Md. Nasim (RW-22), Md. Mokhtar Alam (RW-24), Md. Anish (RW-25), Md. Ali (RW-26), Ram Kripal Sah (RW-31), Md. Zafir Alam (RW-32), Md. Neyaz Ahmad (RW-33), Md. Rataullah (RW-34), Kaushal Singh (RW-35), Md. Obaidullah (RW-36), Md. Oniullah (RW-37), Md. Abdul Raziq (RW-38), Md. Maksood Alam (RW-39), Md. Tanbir (RW-40), Sarfuddin (RW-41), Ran Vijay Yadav (RW-42), Mofiz Khan (RW-43), Md. Hamid Raza (RW-44), Ram Ekbal Rai @ Shree Kranti (RW-45), Md. Anzer Azhari (RW-46), Md. Fazilat Hussain (RW-48), Md. Jamaluddin (RW-49), Md. Mokhtar Alam (RW-50), Md. Aslam Nomani (RW-54) and Md. Amzad (RW-58) were counting agents of respondent No. 1 and Ram Babu Yadav (RW-16), Md. Karim (RW-23), Md. Waliullah (RW-27), Md. Firoz Ahmad Khan (RW-28), Mithilesh Kumar Singh (RW-29), Nehal Ahmad (RW-30), Sheikh Wazul (RW-47), Md. Rase (RW-51), Suresh Yadav (RW-52), Rajendra Prasad (RW-53), Mokhtar Alam (RW-55), and Dr. Mobinul Haque (RW-56), were counting agents of Karimuddin, one of the contesting candidates. In their evidence they have said that they were deputed at different counting tables. Some of them were deputed in initial counting, some in final counting and some in initial as well as in final counting both. They all have said that counting was held properly and no irregularity, as alleged, was committed in the counting. Gopi Paswan (RW-19), in his evidence, has said that he was a voter of booth No. 75 and on the date of polling i.e. on 3-10-99 he had gone to cast his vote but he could not because some persons forcibly entered the booth and started tearing the ballot papers and breaking ballot boxes and therefore, polling was cancelled and when he was coming out from the booth persons who had torn the ballot papers and broken the ballot boxes terrorised the voters and they were shouting slogans in favour of petitioner and re-polling was held at this booth on 5-10-99 when he cast his vote. Dr. Mahendra Pal (RW-57) in his evidence has said that in the counting of ballot papers of election in question he was assigned the duty to assist the Assistant Returning Officer and perhaps he was assigned the duty in the counting of ballot papers of Sheohar assembly constituency segment. He has further said that no irregularity at the table of ARO whom he was assisting was committed in the preparation of final result sheet and in para-3 of his evidence he has made it further clear that by final result sheet he meant that result sheet of

ballot papers of a particular assembly constituency segment and not of the entire election and final result sheet of entire election was prepared under the supervision of Returning Officer. He has further said that in the preparation of result sheet in the hall in which he was assisting the ARO, first roundwise result sheet used to be prepared by ARO and at the end final result of that assembly constituency segment used to be prepared and in preparation of result sheet neither any candidate nor his counting agents ever raised any objection. In para-9 he has admitted that in the roundwise result sheet signatures of contesting candidates or their authorised agents were not obtained but has said that roundwise result used to be announced through public address system.

21. Raghunath Prasad Gupta (RW-60), Kamlesh (RW-61), Surendra Tiwary (RW-62), Deo Narain Sahu (RW-67), Sanjay Kumar (RW-72), Shanker Prasad Chaudhary (RW-73) and Satya Prakash Sinha (RW-75), in their evidence, have said that they were assigned the duties to assist the Assistant Returning Officers in the counting of ballot papers of election in question.

22. RW-60 has said that in the roundwise result sheets which were used to be prepared at the table of ARO same figures used to be noted down which used to be received from the counting supervisors from different counting tables. He has denied the suggestion on behalf of the petitioner that while preparing result sheet more number of ballot papers had been shown than actual number of ballot papers counted in initial counting. RW-61, in his evidence, has described the details of procedure of initial and final counting and has said that in final counting at the table of ARO bundles of ballot papers which used to come from counting tables used to be checked up at random in order to ensure that each bundle contained 25 ballot papers and in checking he did not find any discrepancy in the number of ballot papers actually counted and figures of ballot papers and check memos received from different tables. RW-62 has said that it never happened at the table of ARO that there was any discrepancy in the number of ballot papers taken out from the ballot boxes of a particular booth and the number of ballot papers mentioned in the ballot papers account, Part-II of that booth and has further said that at the time of preparation of roundwise result sheets at the table of ARO no counting agent or any candidate raised any objection as to manner of preparation of roundwise result sheets. RW-67 has said that he worked in initial and final counting of Ghorasahan Assembly Constituency segment and has said that at the table of ARO roundwise result sheets used to be prepared where counting agents of contesting candidates were present but no counting agent or any candidate raised any objection on the point of counting. In para-9 of his cross-examination he has admitted that Part-II of some Form-16 are blank and these

forms are marked Y/582 to Y/800 for identification. RW-72 has said that in the counting his duty was to see that in initial counting after checking of ballot papers received from one table at the table of ARO were cleared then to allow the ballot papers from another table to come to the table of ARO and in final counting also he was performing the same duty and neither any contesting candidate nor any counting agent of any contesting candidate or election agent ever raised any objection about the counting. RW-73 has said that he used to check the number of ballot papers in bundles which used to come to the table of ARO in initial as well as in final counting. In cross-examination he has admitted that Part-II of some Form-16 marked Y/1494 to Y/1713 for identification are blank. RW-75 has said that he had assisted the ARO in the counting of ballot papers and no irregularity was committed in preparation of roundwise result sheets. He has further said that the allegation that while preparing result sheets, respondent No. 1 was shown to have secured more votes than actually secured by him and petitioner was shown to have secured less votes than actually secured by him is not correct. His cross-examination has been declined.

23. Id Mohammad (RW-70) has said that he was not assigned any duty in the election in question. Atma Ram Singh (RW-63), Md. Nurul Hassan (RW-76), Md. Asif Ali (RW-77), Ashish Kumar Dutta (RW-78), M. N. Jha (RW-79), Mabi Hussain Ansari (RW-80), Manzoor Alam (RW-81), Prabhu Nath Prasad (RW-82), Shashank Shekhar Sumari (RW-83), Abdul Jabbar Ansari (RW-84) and S. Farhat Hussain (RW-85) were assigned the duties of counting supervisors in the counting of ballot papers of election in question. RW-63 has said that he was counting supervisor in the initial as well as in the final counting of Bathnaha assembly constituency segment and at his table counting was held correctly and no irregularity was committed. He has further said that in the final counting actual number of ballot papers used to be noted down and it is not a fact that more or less number of votes secured by the candidate used to be noted down than the actual number of votes secured and he has also denied the allegation that at his table more votes were shown for respondent No. 1 and less votes for petitioner than actually secured by them. RW-76 has said that he was counting supervisor in initial counting of ballot papers of Ghorasahan assembly constituency segment and he used to note down the number of ballot papers actually found in ballot boxes in Part-II of Form-16. In cross examination he has admitted that Part-II of some Forms marked Y/580 to Y/800 is blank. He has further said that in some other forms marked Y/650, Y/655, Y/681, Y/692 and Y/706 in Column No. 1 number of ballot papers is mentioned but without date and in some other forms marked Y/661, Y/662, Y/664, Y/667, Y/658, Y/717 although in Column No. 1 total number of ballot papers is mentioned but that is without any signature

and similar is the case with form which has been marked as Y/730. RW-77 has said that he was counting supervisors in the final counting of ballot papers of Ghorasahan assembly constituency segment and after every round of counting he at his table used to prepare check slips showing the number of votes secured by each candidate. He has denied suggestion on behalf of petitioner that after preparing check slips he did not hand over the same to the ARO and carried the same to his house. RW-78 was counting supervisor in the final counting of ballot papers of Bathnaha assembly constituency segment and he has said that counting was held properly. RW-79 was counting supervisor in the final counting of Majorganj assembly constituency segment and has said that after sorting out ballot papers candidate-wise number of ballot papers used to be filled up in a form. Similar is the evidence of RW-81. RW-80 was counting supervisor in initial counting of ballot papers of Majorganj assembly constituency segment and he has said that after initial counting at his table, the total number of ballot papers found in the ballot boxes used to be written on a form and thereafter the form used to be handed over to ARO. He has admitted that Part-II of some of forms out of forms marked Y/1494 to Y/1713 for identification is blank and in some forms only in Column No. 1 number of ballot paper is mentioned but that too without signature and date. About some other forms marked Y/1677 to Y/1708 he has said that signatures in Part-I and Part-II is of the same Presiding Officer. RW-82 was counting supervisor and has said that in the final counting ballot papers round-wise used to be sorted out and total number of votes secured by candidates used to be noted down in a form. He has proved some forms filled up by him in his signature which are marked Ext. G to G/7. RW-83 was counting supervisor in initial counting of Sheohar assembly constituency segment and has said that while Part-II of some forms is blank but at the same time has proved entries in Part-II of Form-16 in his pen and signature and these forms are marked Ext. H to H/3. Similarly RW-84 has admitted that Part-II of some forms marked Y/1070 to 1279 is blank but has proved the entries in Part-II in his pen and signature which is marked Ext. H/4 to H/17. RW-85 was counting supervisor in initial as well as in final counting of Belsand assembly constituency segment and has said that after sorting out ballot papers candidate-wise the number of ballot papers used to be noted down in a format and he has proved some formats in his pen and signature which are marked Ext. G/8 to G/15.

24. Ram Nandan Prasad (RW-69) was the Returning Officer of the Election in question. In his evidence, he has said that he was appointed as Returning Officer of the Election in question by the Election Commission of India and counting of ballot papers of election in question was held properly in two phases,

initial counting and final counting. He has denied the allegation that in the counting more or less ballot papers were shown to have been counted than the number of ballot papers mentioned by the Presiding Officers in the statements of their concerning booths and the allegation that more or less ballot papers were shown to have been counted than the actual number of ballot papers found in the ballot boxes is not correct. He has also denied that allegation of petitioner that in the preparation of final result sheets petitioner was shown to have secured less votes than the actual number of votes secured by him and respondent No. 1 was shown to have secured more votes than the actual number of votes secured by him. He has said that he had prepared order sheets concerning the counting of ballot papers of election in question. He has proved fourteen leaves of order sheets (Ext. B) which were prepared under his dictation. He has admitted that he had received instructions from Election Commission of India that on the result sheets prepared after every round of counting signatures of Election Observer and all contesting candidates or their counting agents or their election agents had to be obtained and had sent copy of this instruction to all contesting candidates through special messengers and got receipts from them and this fact has been mentioned in his order sheets. According to him, whatever instructions he used to receive from Election Commission of India in respect of counting of ballot papers he used to send copies of those instructions to Election Observer and ARO used to announce the result after preparation of result sheets after every round and also announcement used to be made that contesting candidates or their counting agents or election agents should put their signatures on the result sheets. He has further said that during the process of counting any contesting candidate or his election agent or his counting agent never raised any objection of any type and final result of election was announced after taking permission from Election Commission of India and in consultation with the Election Observer because margin of votes secured by respondent No. 1 and petitioner was less than one per cent of total valid votes polled and difference of votes secured by respondent No. 1 and petitioner was 2500. He has been subjected to cross examination on the point of his joining service and remaining at different places and about his promotion but he has denied the suggestion on behalf of petitioner that because he was selected for I.A.S. in the regime of Rashtriya Janta Dal, therefore, he is loyal to this party and for this reason, after announcement of holding election he was brought back to Sitamarhi for becoming Returning Officer of election in question. He has admitted that in the year, 1998 also there was election of Sheohar parliamentary Constituency and at that time he was posted as District Magistrate of Sitamarhi and was Returning Officer of that election and at that time petitioner who was candidate of his own party had won election but he does not

remember whether petitioner's party had any alliance with Rashtriya Janta Dal at that time. About declaring some booths as sensitive, he has said that much prior to notification of election process for declaring some booths sensitive starts and from Election Commission of India he had received information about sensitive booths and he has admitted that Returning Officer has got power to declare a booth sensitive but only after considering the matter with BDO, Police Officers including the Dy. S.P., SDO, ADM etc. and the Election Observer is being informed about the sensitive booths and reason for declaring a booth sensitive and matter is also discussed with the Divisional Commissioner and list of sensitive booths goes to SDO, BDO, CO, Local Police Officers and Magistrates and other persons engaged in the maintenance of law and order duties but such list is not published and copy of list of sensitive booths is sent to Election Observer and Chief Electoral Officer, Bihar. He has denied the suggestion that at the booths where petitioner had majority of voters he deployed para military forces and left some booths without deployment of any force so that respondent No. 1 can take advantage of that situation. About repolling he has admitted that at some polling station there was repolling and about the reason for repolling he has said that the main document for consideration is the report of Presiding Officer of concerned booths and besides this, if Election Observer, Patrolling Magistrates, SDO, Dy SP who visit the booth or even the Returning Officer finds any irregularity in the polling the order of repolling is passed and for repolling at any booth report of Presiding Officer is not only conclusive but the report is very important document and for repolling approval of Election Commission of India is necessary because list of repolling is sent to Election Commission of India for its approval and only after approval is received repolling is held. He has denied the suggestion that none of the Presiding Officers of those booths for which he recommended repolling had made any complaint about any irregularity in the polling and therefore, he destroyed the diaries of those Presiding Officers for writing in his order that Presiding Officers of those booths had made complaints about the irregularity in the polling. He has denied that he wrongly recommended repolling at some booths in spite of the fact that polling at those booths was proper and no irregularity was committed but because majority of voters had supported the petitioner. About the procedure of counting he has said that at the counting tables counting supervisors and staff after showing the seals of ballot boxes to counting agents of contesting candidates used to open the ballot boxes and thereafter ballot papers used to be counted and then the counting supervisors used to mention the total number of ballot papers found in the ballot boxes in Part-II of Form-16 and thereafter the counting supervisors used to send the Form-16 to the table of ARO after putting their initials in Part-II and

normally the ballot papers account form does not come to the Returning Officer but in case of any dispute, the Returning Officer can see the ballot papers account forms and he had no occasion to see the ballot papers account form of all the booths of election in question. According to him, ARO used to inform verbally about the difference in the ballot papers mentioned in the report of Presiding Officer of a booth and actually found in ballot boxes of that booth and he used to give his decision verbally on the aforesaid point. In para-45 of his evidence he has said that only ballot papers which were actually found in the ballot boxes were counted and sometime, by mistake the presiding Officer may write some other figures than the number of votes polled which may give rise to the difference in the number of ballot papers reported by him and number of ballot papers found in the ballot boxes. About Annexure-4 of Election Petition which is letter No. 470/99 (INST)/JS dated 1-10-99 of Election Commission of India and letter No. 1960/CEO, Patna, dated 4-10-99 which is Annexure-5, of Election Petition, he has said that he had received these letters and has said that direction of Election Commission of India in para-2 of Annexure-4 was carried in the manner that at the time of preparation of final result sheet in Form-20 the concerned AROs used to go through part-II of Form-16 and check memos of their counting tables and therefore, he did not think necessary to again go through the same at the time of preparing final result sheet which was prepared on the basis of final result sheets prepared by concerned AROs round-wise in Form-20. He has further said that he used to visit the counting halls frequently and used to go to the tables of AROs to supervise their work and every ARO used to send round-wise result sheets direct through FAX to Election Commission of India. In para 55 and 63 he has said that in round-wise result sheets, marked Exts. 2 to 2/16, there is no signature of any contesting candidate or election observer and when he received round-wise result sheets from ARO without signature of any contesting candidate or his counting agent he inquired from AROs and in turn they replied that when they asked the contesting candidates to put their signatures or their counting agents they said that they would do it at the end of counting and Election Observers used to see round-wise result sheets prepared after every round of counting but they did not put their signatures and ARO did not ask them for the reason for not putting their signatures because Observers were quite senior officers. In Para-56 in his evidence he has admitted that Part-II of some Forms No. 16 marked Y/58 to Y/322, Y/323 to Y/533, Y/580 to Y/800 is blank but on the other hand he has said that Para-II of some Forms No. 16, marked Y/806 to Y/1069 is filled up. About some other Form No. 16, marked Y/1070 to Y/1279 and Y/1280 to Y/1493 for identification he has said that Part-II of most of the Forms No. 16 is blank but in some forms the number of ballot papers in Para-II is mentioned

but there is no signature of any authority. In Para-74 he has admitted that in summary result sheets of Majorganj and Ghorasahan assembly constituency segments (marked Y/1714 and Y/36 respectively, for identification) there is no signature of any authority. He has denied the suggestion on behalf of the petitioner that in counting several irregularities were committed and he had no control over his subordinate officers and all irregularities committed in the counting were within his knowledge but deliberately he did not take note of that and that he did not fulfil his statutory duties as Returning Officer and he allowed his subordinates to avoid the mandates of Conduct of Election Rules and instruction of Election Commission of India and in order to conceal the aforesaid irregularities he did not supply certified copies of Form-20 of two assembly constituency segments despite application being filed by Mani Bhushan, a worker of petitioner and he destroyed the diaries of some Presiding Officers because he without any cogent reason had recommended for re-polling at those booths. He has further denied that it is not a fact that round-wise result sheets of Bathnaha and Majorganj assembly constituency segments sent to this Court were manufactured by him and concerned AROs and original result sheets of aforesaid segments were destroyed. He has also denied suggestion on behalf of the petitioner that the petitioner, in fact, had won the election but he was declared defeated by committing irregularities in the counting and he got respondent No. 1 declared elected. He has volunteered that he was Returning Officer of Sitamarhi parliamentary Constituency in which candidates of ruling party was defeated.

25. R.D. Kharosikar (RW-86) was one of the three Election Observers of election in question. In para-2 of his evidence he has said that in the year 1999 he was posted as Director in Tribal Research Training Institute at Pune and he was appointed as Election observer by Election Commission of India of the election in question and in the counting of ballot papers also he performed the duties of Election Observer and besides him, there were two more Observers namely, Mr. Basudevan and Mr. Dinesh Kumar. In Para-2 of his evidence he has said that during the counting he did not receive oral or written complaint from anybody about any irregularity committed in the counting and any allegation to the effect that during the counting complaint about irregularities in counting was made to him but he did not take any action on the complaint is not true and after completion of election he sent this report (Ext. E). About his signature on round-wise result sheets he has said that he does not remember whether after every round final counting his signature on the round-wise result sheets was obtained or not but he had seen some round-wise result sheets. About final result sheet he has said that he had opportunity to see final result sheet but he does not remember that when

final result sheet was produced before him at that time supporting materials on the basis of which final result sheet was prepared were produced before him or not. He has denied suggestion on behalf of the petitioner that at the time of production of final result sheet before him no supporting material on the basis of which final result sheet was prepared was produced before him. He has further said that during the counting he was giving rounds in the counting halls and during initial counting he never noticed that number of ballot papers shown in part-II were proportionately high or low than the number of ballot papers shown in part-I of Form-16.

26. The election petitioner in his petition has levelled the allegation of irregularities committed in initial counting of ballot papers. According to him, the number of ballot papers used in polling as shown by Presiding Officers of a number of booths differs from the number of ballot papers shown in Part-II of Form-16 which is meant for number of ballot papers actually found in ballot box or boxes of concerned booth. According to him, in initial counting instruction of Election Commission of India were flagrantly violated and AROs did not even bother to take care of the fact that according to Part-I how much votes were polled at a particular booth and how much votes for that booth were counted and this resulted in gross illegalities and for many booths there was huge differences in actual votes polled at those booths as shown in part-I of Form-16 and votes counted at the time of initial counting as shown in Part-II of Form-16. He has cited the difference of a number of ballot papers as shown in Part-I and Part-II of Form-16 for Booth Nos. 2, 256, 139 of Dhaka Assembly Constituency segment. About Booth Nos. 209, 255 and 157 he has said that the number of votes counted at the time of initial counting differed from the number of votes as shown in Part-I of Form-16 for these booths but has not mentioned about any entry in Part-II of Form-16 of these booths, as he has mentioned in respect of Booth Nos. 2, 256 and 239, therefore, it is not clear that how he came to know the figures of votes actually counted in initial counting for such booths. He has further said that in counting of votes of Booth Nos. 7, 20, 52, 57, 62, 88, 101, 120, 127 and 154 of Dhaka Assembly Constituency segment a total number of 1435 votes were arranged in favour of respondent No. 1 from the said booth and there is much difference between the number of votes polled at these booths and number of votes counted for these booths. He has not given the details of figures for these booths and it is not clear that how he has said that in initial counting 1435 votes were arranged in favour of respondent No. 1. He has further said that his worker Shri Mani Bhushan filed requisition on 11-10-99 to obtain certified copies of Form-16 of aforesaid booths but the copies were not supplied. Similarly, he has mentioned the difference in the figures of ballot papers as mentioned in Part-I and

Part-II of some other booths of other assembly constituency segments and has also given figures as mentioned in Part-I of Form-16 for some other booths without mentioning the figures entered in Part-II of Form-16 of those booths but has given the figures of votes in actual counting for these booths. In Para-59 he has said that there was no tally in the figures mentioned in Part-I and Part-II of Form-16 and at some booths number of votes counted was less than the number of votes polled or the number of votes counted was excess than the number of votes polled and inspite of the demand of certified copies of Para-II of Form-16 of Bathnaha Assembly Constituency segment the same were not supplied and reason for non-supply was that record of initial counting of this segment was not properly maintained and because of these irregularities committed more than 50,000 votes have been illegally counted in favour of respondent No. 1.

27. Shri S.B.K. Mangalam, learned counsel appearing on behalf of the petitioner, during his argument has submitted that the ballot papers account in Form-16 of Booth Nos. 70, 78, 111, 134, 158 and 89 of Ghorasahan Assembly Constituency segment which are marked Exts. 7 to 7/5 show that according to the report of Presiding Officers of these booths, the number of votes polled were 200, 480, 460, 600, 639 for Booth Nos. 70, 78, 111, 134 and 158 respectively of Ghorasahan Assembly Constituency segment but then Exts. 3/4, 3/5, 3/7, 3/9 and 3/11 which are compilation of number of ballot papers found in ballot boxes of different booths show that in initial counting votes for these booths were counted as 309, 619, 467, 590 and 338 respectively. He has further argued that for booth No. 59 of this segment Ext. 3/4 shows that 449 votes were polled in initial counting but Part-I of Form-16 of this booth which is marked Y/638 for identification is blank. Further argument advanced on behalf of the petitioner is that RW-56 in his cross examination has admitted that a number of Part-II of Form-16 which are marked Ext. Y/9 to Y/15 are blank. It is true that this witness has admitted that Part-II of some Forms No. 16 are blank but at the same time in Para-10 of his evidence he has said that all Forms No. 16 which crossed from his eye sight were found completely filled up and figures mentioned in Part-I and Part-II of those forms were the same and during the counting because he used to go other counting tables also, therefore, it is just possible that some Forms Part-II of which is blank might have missed from his eye sight. According to Mr. Mangalam, by not filling up Part-II of a number of Forms No. 16 which are marked for identification in 'Y' series and in some Forms in Part-II by showing less or more number of ballot papers found in ballot boxes than reported by Presiding Officers of those booths in Part-I irregularities in initial counting have been committed. It is true that Part-II of some of the Form

No. 16 are blank. When during examination of witnesses on behalf of respondent No. 1 some witnesses denied about the genuineness of Forms No. 16 Part-II of which were not filled up after those were shown to them this Court directed the District Magistrate, Sitamarhi for making search of any such form or check memo or other documents which might have been left in his office and were not sent to this Court. The District Magistrate sent his reply by letter which is marked Court Ext. 1 which was brought by Bipin Bihari (Court witness No. 1), Sub Election Officer, Sitamarhi. In his evidence he has said that on receipt of direction of this Court to reply whether certain documents such as Form-16, check memo prepared by counting supervisors and ballot papers account form prepared by counting supervisor and counter signed by Assistant Returning Officers are still in his custody and if so then to send those left over documents to this Court, the District Magistrate constituted a meeting of six officers including himself for making search of any left over documents and he was one of the member of that committee and after formation of committee, search for documents demanded by this Court was made out but no such document was found in the strong and office of the election department and strong room of the Treasury of Sitamarhi. He has further said that some other documents which were found have been brought by him in Court. In cross examination he replied that some sealed trunks containing the unused ballot papers were earlier sent to this Court but about contents of those sealed trunks he denied any knowledge and further said that he does not know that the sealed trunks which are in custody of this Court may contain ballot papers account or check memos. On this evidence and on the evidence of some witnesses who doubted the genuineness of ballot papers account Part-II which was blank a prayer on behalf of respondent No. 1 was made for searching documents in sealed trunks which was rejected. Now the position remains that some Part-II of Forms No. 16 are blank and as stated above, learned counsel of petitioner has pointed out discrepancy in the number of ballot papers mentioned in booth wise compiled statement of ballot papers found in ballot boxes and number of votes polled at those booths as shown by Presiding Officers in Part-I but then in entire election petition petitioner has not mentioned anything about any Form-16 of which Part-II was blank. It is not the case of petitioner that in initial counting some ballot papers found in ballot boxes of different booths were kept out of the ambit of counting or some more ballot papers were added in the ballot papers found in ballot boxes. From the perusal of Exts. 7 to 7/5 it appears that Ext. 7/5 is Form-16 of Booth No. 59 of Ghorasahan Assembly Constituency segment and right from Column No. 1 showing the receipt of ballot papers for this booth, to Column No. 5 which are meant for showing the number of ballot papers used, the number of ballot papers unused and ballot papers found in ballot boxes are all blank.

Ext. 7/1 is Form-16 of Booth No. 78 of Ghorasahan Assembly Constituency segment and Column No. 1 of Part-I of this Form shows that 1010 votes were received for this booth and Column No. III shows that about 80 ballot papers were used and Column No. VI which is meant for number of ballot papers to be found in ballot boxes of this booth shows that 1010 ballot papers were to be found which is against the figures mentioned against Column Nos. I and III meant for number of ballot papers used in ballot boxes which is written as 480. Ext. 7 is Form-16 of Booth No. 70 of Ghorasahan Assembly Constituency segment and it shows that in Column No. I of Part-I of this Form-16 shows that 510 ballot papers were received for this booth and Column No. III shows that only 200 ballot papers were used but Column No. V which is meant for number of ballot papers to be found in ballot boxes is blank. These circumstances show that Part-I of some Forms No. 16 were not properly filled up by Presiding Officers of some booths. In such circumstance, if figures of ballot papers mentioned in Part-II of Form-16 differed from the figures mentioned in Part-I of such forms it can not be said that any irregularity was committed. About those Forms Part-II of which is blank as it has been stated above that the petitioner has not made any statement in his entire election petition that Part-II of such Form-16 was left blank but now he has made out a case of irregularities on this point also. Learned counsel of petitioner has argued that non-filling of Part-II of Form-16 is violative of statutory provisions which have got force of law and it amounts irregularity in the counting. It is not that all Part-II of Form-16 used in election in question were blank. When petitioner himself appeared as a witness, he was shown some Forms No. 16 and after perusing those forms he admitted that number of ballot papers shown in Part-I and Part-II of those forms tally with each other. These forms are marked as Ext. C to C/5. It is true that in some forms which are marked in Ext. 7 series on behalf of petitioner during the course of argument the number of ballot papers shown in Part-II differs from the number of ballot papers shown for those booths in compiled statement of initial counting but then question arises how this error affected the final counting. If number of ballot papers shown in initial counting differs from the number of ballot papers actually found in ballot boxes and in final counting total number of votes counted is as per the figure shown in initial counting only then a doubt about the genuineness of final counting can be raised because that will clearly show that number of votes actually found in ballot boxes were not shown to have been counted in final counting and the number of ballot papers shown in the chart of initial counting was the basis of final counting. Present case is not a case of that type. The petitioner in paras 27, 28 and 29 has admitted that in initial counting of votes in Ghorasahan, Dhaka and Sheohar assembly constituency segment 1,09,484, 1,36,514 and 1,15,762

votes respectively were shown to have been counted but in final result sheets it is shown that for these segments as 1,09,772, 1,36,684 and 1,15,848 votes respectively were counted. It is true that Ext. 3 to 3/16 proved by Navin Chandra Jha (RW-59), ARO which are consolidated sheets showing the number of ballot papers found in different booths of this segment shows that altogether 1,09,484 votes were shown to have been counted in initial counting. Ext. 2 to 2/7 proved by same RW-59 are the round wise result sheets of this segment prepared during the final counting show that in final counting number of total votes counted including the valid and rejected votes was 1,09,772. Ext. 3/17 to 3/37 proved by Daya Nandan Prasad (RW-64). ARO are the consolidated sheets showing the number of ballot papers found in ballot boxes of different booths of Dhaka assembly constituency segment and Ext. 3/37 in two sheets is summary result sheets shows that for Dhaka assembly constituency segment total 1,63,514 ballot papers were counted in initial counting. Ext. 2/8 to 2/17 proved by same RW-64 are round wise result sheets of Dhaka assembly constituency segment and Ext. 2/10 is consolidated list of final counting for Dhaka Assembly Constituency segment and Ext. 2/18 is consolidated list of ballot papers counted in initial counting in different rounds of this segment which shows that for this segment in final counting 1,36,684 ballot papers including the valid and rejected ballot papers were counted. Ext. 5/1 in different sheets is the consolidated statements of ballot papers shown to have been counted in initial counting for different booths of Belsand assembly constituency segment and from this sheet it appears that 1,05,520 ballot papers were shown to have been counted for this segment but from Exts. 2/37 to 2/44 which are round wise result sheets and Ext. 2/45 which is summary result sheets of round wise result sheet of this segment shows that altogether 1,04,520 votes were shown to have been counted in final counting. The order sheet (Ext. B) of R.O. shows that 1000 ballot papers of table No. 8 in 8th round of final counting of this segment were not counted because of objection raised by petitioner. Therefore there is no discrepancy in the number of ballot papers counted in initial counting and final counting for this segment. Ext. 5 is the consolidated chart in different sheets showing the number of ballot papers counted in initial counting for different booths of Sheohar assembly constituency segment. This chart is marked Ext. 5 and it shows that altogether 1,15,762 ballot papers were shown to have been counted in initial counting for this assembly constituency segment. Exts. 2/19 to 2/27 are round-wise result sheets and Ext. 2/28 is the summary result sheet of all rounds of this segment showing that in final counting 1,15,848 ballot papers including valid and rejected ballot papers were counted. Ext. E is the consolidated chart in different sheets showing the number of ballot papers counted in initial counting for different booths of

Bathnaha assembly constituency segment and as per this chart altogether 1,38,255 ballot papers was shown to have been counted in initial counting. Ext. D to D/9 are round-wise result sheets and Ext. D/10 is summary of round-wise result sheets showing that in final counting also the same number i.e. 1,38,255 ballot papers including valid and rejected were counted. So for this assembly constituency segment there is no difference in the number of votes shown to have been counted in initial counting and number of votes shown to have been counted in final counting. For Majorganj assembly constituency segment the consolidated statement of votes shown to have been counted in initial counting is not on record. From all these facts it is established that figures of ballot papers shown to have been counted in initial counting for Dhaka, Ghorasahan, Sheohar and Belsand assembly constituency segments have not been shown as number of total ballot papers counted for these segments in final counting. As stated above, it is not the case of petitioner that some ballot papers actually found in ballot boxes were kept aside and were not counted in final counting or some more ballot papers other than ballot papers found in ballot boxes were added in final counting. If, according to the petitioner, there was error in recording the number of ballot papers actually found in ballot boxes and showing in the charts in initial counting but then if those figures are not the basis of final counting I do not find that the error in recording the number of ballot papers committed while showing it in charts of initial counting of some segments has in any way affected the final counting. Under these circumstances, the possibility that actual number of ballot papers found in ballot boxes were counted in final counting can not be ruled out. On the basis of error in recording the number of ballot papers in the charts of initial counting, the petitioner has to show that now this error was, in fact used in final counting. Merely showing that there was error in the figures recorded in the charts of initial counting of some assembly constituency segments it can not be said that such error affected the final counting, in view of the fact that those figures were not shown to have been used in the final counting. The petitioner, no doubt, in para 14, 16 and 18 of his evidence has said that more or less number of ballot papers were shown to have been polled in the initial counting than the number of votes actually polled at some booths. In para-17 he has said that such irregularities were committed in respect of some booths of Belsand Assembly Constituency segment at the time of initial counting. As stated above, there is no difference between the figures shown to have been recorded in initial counting and in final counting of Belsand Assembly Constituency segment. In para 46 of his evidence a question was put to him on behalf of respondent No. 1 that did he file any written complaint during the course of initial counting before the Returning Officer or Assistant Returning Officer alleging therein the

irregularities committed in initial stage of counting to which he replied that he sent complaint to Chief Electoral Officer, Election Commission of India, New Delhi, on 7-10-99 in which he stated about the partisan attitude of Election Observers and Returning Officer towards respondent No. 1 and not taking any action on his complaint. In para-50 of his evidence he has clearly stated that his counting agents on the table of AROs did not lodge any written complaint during the course of initial counting of ballot papers because no major irregularity was committed during the initial counting of ballot papers and major irregularity was committed during the preparation of final result sheet. This completely demolishes his case that irregularities were committed in initial counting of ballot papers of election in question. Some discrepancy in mentioning some figures shown by the Presiding Officer in Part-I of Form-16 and number of ballot papers shown for those booths in chart prepared during initial counting and omission of filling up of Part-II of some Form-16 will not be the ground for holding that it has materially affected the result of the election in question particularly when no complaint by petitioner in this regard was made before any authority engaged in the counting and own admission of petitioner in his evidence is that no major irregularity was committed in initial counting was committed and major irregularity was committed during the preparation of final result sheets.

28. About final counting the case of petitioner as made out in para-91 of election petition is that counting agents of election petitioner were throughout present at the counting tables and they were meticulously watching the process of counting and they were taking notes of votes received by the petitioner at the conclusion of each round of counting at all the counting tables and the petitioner or his election agent or his counting agents sitting at the Assistant Returning Officer tables were being informed by the counting agents of each table regarding votes received by petitioner on each table in every round and the petitioner was also meticulously watching the counting process after moving thoroughly on each and every counting table of Parliamentary Constituency. Thereafter in different paragraphs from 92 to 103 the petitioner in his petition has given the figures of votes secured by him on different counting tables in different rounds of counting as per information received by him from his counting agents present at those counting tables. The counting agents of petitioner who participated in final counting, when produced as witnesses on behalf of the petitioner, have in their evidence stated that final counting was held properly. In the election petition the irregularities said to have been committed in final counting besides noting down less number of votes than actually secured by petitioner include the difference between the number of ballot papers counted in initial counting and the number

of ballot papers counted in final counting which has already been discussed in the foregoing paragraphs of this judgment. Now during the trial petitioner has made out a complete new case by stating in his evidence that final result sheet (Ext. 8) was first prepared by Returning Officer and thereafter on the basis of this final result sheet roundwise result sheets were prepared by Assistant Returning Officers at the dictate of the Returning Officer. This is altogether a new case which has not been pleaded in the election petition of petitioner and is against pleadings in para 82 of petition that on the basis of manufactured and doctored roundwise result sheets prepared by AROs at the dictates of R.O. final result sheet was prepared.

29. Navin Chandra Jha (RW-59), Daya Nandan Prasad (RW-64), Balram Singh (RW-65), Awadhesh Pandey (RW-66), Sripati Sahay (RW-71) and Raj Ballav Singh (RW-74) were assigned the duties of AROs in the counting of ballot papers of election in question. Out of these witnesses, Balram Singh (RW-65) and Awadhesh Pandey (RW-66) both were the Assistant Returning Officers of Sheohar Assembly Constituency segment and remaining are AROs of other Assembly Constituency segments. RW-59, RW-64, RW-65, RW-68, RW-71 and RW-74 have said that after every round of counting roundwise result sheets used to be prepared. Awadhesh Pandey (RW-66) who was ARO of Sheohar Assembly Constituency segment has said that besides him, Shri Balram Singh (RW-65) who was senior to him was also Assistant Returning Officer of this segment who used to take decision on the doubtful ballot papers. He has denied the allegation that in final counting more number of ballot papers shown to have been counted than the number of ballot papers taken out from the ballot boxes in initial counting. Navin Chandra Jha (RW-59) has proved roundwise result sheets of Ghorasahan Assembly Constituency segment prepared by him under his signature which are marked Exts. 2 to 2/7. He has also proved the chart in 17 sheets showing the number of ballot papers found in ballot boxes of different booths of this segment, marked Exts. 3 to 3/16. Daya Nandan Prasad (RW-64) had proved roundwise result sheets of Dhaka Assembly Constituency segment which are marked Exts. 2/8 to 2/17. He has also proved chart in 20 sheets showing the number of ballot papers counted in initial counting as per their recovery from ballot boxes of different booths of Dhaka Assembly Constituency which are marked Ext. 3/17 to 3/36. It appears that inadvertently he has said that this chart is of final counting whereas the fact is that this chart is of initial counting. Summary result of initial counting of Dhaka Assembly Constituency segment proved by him is marked Ext. 3/36. He has further admitted that in some roundwise result sheets marked Exts. 2/8 to 2/17 at some places there are some overwritings but has added that these overwritings have been made in order to correct the mistakes.

He has admitted that he has not put his initials on overwritings as there was no cutting. He has admitted that in Exts. 3/17 and 3/18 which are result sheets of round Nos. 1 and 2, some over-writings bear his signatures. From perusal of round-wise result sheets which are marked Exts. 2/8 to 2/18 I find that in summary result sheet which is marked Ext. 2/18 there are over-writings at three places in column Nos. 3, 4, 5, 6 and 7 but then these are not in respect of votes secured by petitioner or respondent No. 1 and besides this, the aforesaid columns are showing the number of votes secured by candidates, total valid votes and number of rejected ballot papers, in different rounds and after every column total is there and there is no overwriting in the total number and therefore, these overwritings do not produce any effect. Similarly, in Exts. 2/9, 2/12, 2/17 there is no cutting or over-writing so far number of votes of petitioner and respondent No. 1 is concerned. No doubt in Ext. 2/11 there is over-writing in respect of votes of respondent No. 1 for table Nos. 4 and 9 which is result of 4th round of final counting but then total of figures of votes shows that it was initially written 9343 which has been made 9345. In Ext. 2/13 which is round-wise result sheet of 6th round of counting there is over-writing on the total number of votes secured by respondent No. 1 at all tables but then there is no overwriting or cutting in respect of votes secured table-wise and it appears that only totalling has been corrected but on the contrary in respect of votes secured by petitioner for table No. 8 there is over-writing by which figure 545 has been made 547. The position itself shows that there is correction at some places in respect of votes secured by respondent No. 1, but then such correction is also made in respect of petitioner and by this correction his votes were increased. He has denied the suggestion of petitioner that over-writings and cuttings have been made in preparation of result sheets in order to see that respondent No. 1 is declared elected in the election in question. Balram Singh (RW-65) has also proved roundwise result sheets, marked Exts. 2/19 to 2/27 and also summary result sheet (Ext. 2/28) showing the number of votes secured by candidates in all rounds of counting of Sheohar Assembly Constituency segment of which he was ARO. In para-28 of this evidence he has admitted that in round-wise result sheets and summary result sheet which are marked Exts. 2/19 to 2/28 at some places there are cuttings and overwritings without any initial. From perusal of the aforesaid result sheets I find that in roundwise result sheets, marked Exts. 2/19, 2/22, 2/24 and 2/25 there are over-writings without any initial but then these are not in respect of votes secured by the petitioner or respondent No. 1. In Ext. 2/20, which is roundwise result sheet of 2nd round for table No. 5, there are over-writings showing the votes secured by petitioner as well as respondent No. 1 but then there is no over-writing or cutting in total votes shown to have been secured by both the candidates at all 14 tables. It appears to be a mistake in noting down the votes shown.

to have been secured by both candidates at a particular table but duly corrected because, as stated above, there being no cutting in totalling suggests that correction in entries was not made subsequently or afterward.

30. Syed Nasimut Tauheed (RW-68), Assistant Returning Officer of Bathnaha Assembly Constituency segment has proved ten round-wise result sheets, marked Exts. D to D/9 and has also proved summary result of these sheets which is marked Ext. D/10. He has also proved the report showing the number of ballot papers found in ballot boxes of different booths in initial counting and this report in 20 sheets is marked Ext. E. He has said that round-wise result sheets have been prepared on the basis of check memos and number of votes actually secured by contesting candidates. He has also proved his order sheet dated 6-10-99/7-10-99 typed under his dictation and bearing his signature and this order sheet has been marked as Ext. F. In this order sheet he has stated that before start of counting important points and procedure regarding counting were sent to the agents, assistants and supervisors and in view of letter No. 1960 dated 4-10-99 Chief Electoral Officer it was announced that in every round the candidates or their counting agents were required to put their signatures on round-wise result sheets otherwise, any request on their behalf for recount would not be considered. In this order sheet it is also stated that ballot papers of booth No. 12 were not counted because out of two boxes one ballot box was found open and in the ballot papers account it was mentioned that the booth was captured and after snatching ballot papers votes were put in boxes. He has said that counting of ballot papers of this booth was postponed and ballot papers were kept in Strong room and information to Election Commission of India was sent and instructions were sought and thereafter process of counting was started. In this order sheet details of votes secured by different candidates including petitioner and respondent No. 1 are mentioned and on comparison of these figures from the figures mentioned in Ext. D/10 which is summary of round-wise result sheets of Bathnaha Assembly Constituency segment I find that figures in this order sheet and final result sheet shown in respect of all candidates including petitioner and respondent No. 1 are same without any discrepancy or difference. This witness has further stated that round-wise result sheets were prepared on the basis of check memos and for the number of votes actually secured by contesting candidates in counting and in preparation of result sheet no irregularity was committed. After perusing Ext. B which is order sheet of Returning Officer he has said that in the order sheets of the dates of 6-10-99 to 7-10-99 of Returning Officer which is marked Ext. B it is mentioned that contesting candidates were sent letters informing them that either they or their counting agents were required to put their signatures on round-wise result sheets prepared after every round of counting. He has said that no

irregularity either in initial counting or final counting was committed.

31. Sripati Sahay (RW-71) who was ARO of Majorganj Assembly Constituency segment has said that after completion of counting of one round of final counting when check memos from all counting tables used to come to the table of ARO then round-wise result sheets used to be prepared and after preparation of round-wise result sheets announcement through loudspeaker used to be made declaring the number of votes secured by each candidate and announcement also used to be made asking the contesting candidates or their counting agents or their election agents to put their signatures on the round-wise result sheets. He has said that no complaint in respect of either initial counting or final counting or in respect of preparation of round-wise result sheets was ever raised by anybody. He has proved order sheet prepared by him and bearing his signature which is marked Ext. F/1. In his order sheet dated 7-10-99 it is clearly stated that counting was completed at 7.30 A.M. on 7-10-99 and result of every round of counting was announced by mike and after counting every candidate was informed by mike the number of votes secured by him and in spite of announcement of result of counting after every round and request, no counting agent put his signature on the round-wise result sheets. In his order sheet the number of votes secured by different candidates including the petitioner and respondent No. 1 is stated and the summary of round-wise result sheets giving the total figures of votes secured by different candidates in all rounds of final counting of Majorganj Assembly Constituency segment which has been marked Y/1714 and which is Annexure-7 of election petition shows that figures in summary result sheet have been correctly stated and there is no variation. Much argument has been raised on behalf of the petitioner that this summary result sheet which is marked Y/1714 does not bear the signature of the ARO. According to the evidence of RW-71, summary result sheet was prepared giving the figures of votes secured by different candidates as shown in round-wise result sheets and in this way the summary result sheet was prepared on the basis of round-wise result sheets which are marked Ext. 2/29 to 2/36.

32. Mr. Mangalam, learned counsel for the petitioner, has argued that out of the result sheets of different rounds of final counting of Majorganj assembly constituency segment, no doubt, so far result sheets of round Nos. 1 to 8 are concerned, they are shown to bear the signatures of ARO but so far 9th round of final counting is concerned, that is without the signature of ARO, and, therefore, no reliance can be placed on the figures which have been shown in summary result sheet because summary result sheet is compilation of figures of all rounds of final counting including 9th round. Result of 9th round of final counting of Majorganj Assembly Constituency segment has been marked Y/1715 for

identification. This result sheet shows that 2567 votes in favour of respondent No. 1 and 5300 in favour of petitioner. In this way, result sheet of 9th round which is without the signature of ARO shows more number of votes for petitioner than respondent No. 1 and in this view of the matter there was no question to believe that summary result sheet marked Y/1714 which is without signature of ARO shows less number of votes for petitioner than actually secured by him because, as stated above, this summary result sheet is the summary of all rounds including round Nos. 1 to 9 and result sheet of round Nos. 1 to 8 are bearing signature of ARO and result sheet of 9th round which is without signature of ARO shows more votes in favour of petitioner than respondent No. 1.

33. Raj Ballav Singh (RW-74), ARO of Belsand assembly constituency segment has said that basis of preparation of final result sheets was check memos prepared on every counting table after every round of final counting and nobody made any complaint regarding counting of ballot papers and preparation of round-wise result sheets at his table because counting was held properly and no irregularity was committed. He has proved his order sheets dated 6-10-99 and 7-10-99 in four pages typed by his steno and bearing his signatures which are marked Ext. F/2. He has denied the allegation of petitioner that less number of votes were counted in initial counting than the number of ballot papers mentioned in ballot papers account by the Presiding Officer. In his order sheet dated 7-10-99 he has mentioned that before start of election all counting persons engaged in the counting and counting agents were informed about the process of counting and about instructions of Election Commission of India. In this order sheet it is stated that during the final counting at table No. 8 in round No. 8, 166 ballot papers were in favour of petitioner and 751 were in favour of respondent No. 1 and the counting agents of petitioner raised objection that marking of ballot papers which were counted in favour of respondent No. 1 was in different ink than supplied to Presiding Officer whereas the submission of counting agents of respondent No. 1 was that 5000 ballot papers which were counted in favour of petitioner were also in the same ink therefore, this should be counted in favour of respondent No. 1 and considering the claim and counter claim all the 1000 ballot papers of table No. 8 were sealed and instructions from Election Commission of India were sought. This order sheet shows that complaint made by the counting agents of petitioner was duly considered and action on that was taken. This witness has proved round-wise result sheets of Belsand assembly constituency segment which are marked Exts. 2/37 to 2/44 and summary round-wise-result sheet which is marked Ext. 2/45. Although he has first said that he had obtained signatures of counting agents of contesting candidates on round-wise result sheets prepared by him but thereafter he has said that Ext. 2/37 to 2/44 do not

bear the signature of any counting agent of contesting candidate and has volunteered that signatures of counting agents were obtained on a register. He has denied the suggestion on behalf of the petitioner that round-wise result sheets which are marked Exts. 2/37 to 2/45 were not prepared by him at the time of counting but were subsequently prepared. In Para-15 of his cross-examination he has admitted that in his order sheet marked Ext. F/2 it is stated that during 8th round of final counting at table No. 8 counting agent of petitioner raised objection in respect of counting of 1000 ballot papers. He has admitted that in 8th round of counting 1000 ballot papers were counted. Mr. Mangalam, learned counsel for the petitioner, drawing my attention towards the round-wise result sheet of 8th round of Belsand assembly constituency segment which is marked Ext. 2/44 has submitted that at table No. 7 only 520 ballot papers were counted which is against the evidence of this witness that at this table 1000 votes were counted. He has also stated that this result does not show the number of ballot papers counted at table No. 8 as per the own admission of this witness. He has given suggestion to this witness that at table No. 7 1000 ballot papers were, in fact, counted in 8th round of counting and because all ballot papers were in favour of petitioner, therefore, he took away all ballot papers somewhere else and has shown figures of 520 ballot papers of table No. 9 against table No. 7. No doubt, at table No. 7 total number of valid and rejected votes is mentioned as 520 out of which 260 votes have been shown in favour of petitioner and 240 in respect of respondent No. 1. From the perusal of check memos of this assembly segment which have been proved by RW-85, a counting supervisor, and are marked Ext. G/8 to G/15, I find that for the table No. 7 of eighth round of counting the figures shown in check memos have been correctly noted against table No. 7 in the result sheet prepared for eighth round. When RW-85 was examined and he proved the aforesaid check memos no suggestion has been given to him that check memos proved by him are not genuine. The suggestion to RW-74 that in the result sheet of eighth round he has shown figures of table No. 9 against table No. 7 is perhaps based on the thinking that when 1000 ballot papers were sent to table No. 8 how at table No. 7 only 520 ballot papers were sent which must have been left over ballot papers after distribution of 1000 ballot papers per table and the residue ballot papers must have been sent to table No. 9. No doubt this witness, RW-74, has said that in 8th round of counting 1000 ballot papers each were counted from table No. 1 to 7 but at the same time he has stated the manner of distribution of ballot papers to counting tables by citing example that for counting 8520 ballot papers, 1000 ballot papers each would be sent to eight tables and remaining 520 ballot papers would be sent to ninth table. He has not stated that distribution of ballot papers to counting tables would be in serial number of tables. The check memos prepared for eighth round of counting show the figures of

votes secured at seven tables and exactly the same figures for all the seven tables have been noted down in the result sheet prepared for eighth round. About the ballot papers of table No. 8 this witness has said those ballot papers were sealed and instruction from Election Commission of India was sought. His evidence clearly shows that in eighth round of final counting ballot papers were distributed to eight tables and not nine tables as per suggestion given to this witness on behalf of the petitioner. About ballot papers of table No. 8 of eighth round although evidence of this witness is that after receipt of instruction from Election Commission of India those ballot papers were counted but then from perusal of order sheets (Ext. 2) of Returning Officer it appears that ballot papers of table No. 8 on the result of counting of which petitioner's counting agent raised objection were not counted. Ext. 5/1 is chart in different sheets showing the number of ballot papers counted in initial counting and on adding the figures of all sheets number comes to 15520 and Ext. 2/15 which is summary of round wise result sheets shows that 104520 ballot papers were counted in final counting of Belsand assembly constituency segment. The petitioner has not sought the relief for declaring the entire election void for not counting 1000 ballot papers of table No. 8 of eighth round of Belsand assembly constituency segment. He has claimed relief of declaring election of Respondent No. 1 void and for recount. Besides this, the order sheet (Ext. F/2) shows that at table no. 8 petitioner had polled only 166 votes whereas respondent No. 1 polled 751 which as discussed above were not counted in final counting because of objection raised on behalf of petitioner.

34. From the evidence of Assistant Returning Officers I find that they all have said that they prepared round wise result sheets during the final counting on the basis of check memos. It is true that check memos of only two assembly constituency segments namely, Sheohar and Belsand are on record and check memos of other segments have not been received but the petitioner has already introduced a quite new case that final result sheet (Ext. 8) on the basis of which result of election in question was declared was first prepared and thereafter round wise results were prepared meaning thereby check memos were not the basis for preparing result sheets. He does not say anything about the order sheets marked F and F/1 prepared by Assistant Returning Officers in which number of votes secured by contesting candidates are mentioned. The reason for preparing final result sheet first by Returning Officer showing respondent No. 1 as a winning candidate as stated by petitioner in his evidence as well as in election petition is that because respondent No. 1 was the candidate of a party which at the time of election in question was the ruling party in the State of Bihar and the President of this party wanted Respondent No. 1 to win the election and because Returning Officer was obliged to the ruling party because his name was recommended for his

promotion to IAS cadre by the government led by the party to which respondent No. 1 at that time belonged and therefore, Returning Officer by adopting partisan attitude got respondent No. 1 elected in the election in question. It means that ruling party wanted success of respondent No. 1 who was its candidate. Here it is very important to mention that Returning Officer (RW-69) in his evidence has said that besides being the Returning Officer of 12-Sheohar Parliamentary Constituency which was the Constituency of election in question, he was Returning Officer of Sitamarhi Parliamentary Constituency also in the same election but in the election of that Parliamentary Constituency candidates of ruling party lost its election. This fact has not been challenged by the petitioner and this completely demolishes the case of election petitioner that Returning Officer was capable enough to manage the election of any particular candidate. The case of petitioner is that in the round wise result sheets and final result sheet he has been shown to have secured less votes than actually secured by him. The basis of his saying so, according to him, is that he had collected the figures from his counting agents who were at counting tables at the time of final counting and who were noting down the figures of votes secured by him at different tables in different rounds of different assembly constituency segments. His counting agents have also said like that. In para-83 of his election petition he has clearly stated that his counting agents at different tables in various assembly segments had maintained proper chart in a copy containing the details of votes polled in his favour and respondent No. 1 and this shall be produced as evidence. No such chart has been produced by the petitioner which gives a death blow to the case of petitioner because he is challenging the figures recorded in round wise result sheets and final result sheet on the basis of information which he got from his counting agents about the votes secured by him and that information itself was based on the charts maintained by his counting agents but no such chart has been produced. The petitioner in his election petition as well as in his evidence has also said about the booth capturing by respondent No. 1 and turning down his request for repolling at some booths and allowing such prayer made on behalf of respondent No. 1 by Returning Officer. This case has not been filed on the allegation of corrupt practices and Mr. Mangalam, during his argument, has also stated that petitioner has not made out a case of corrupt practices adopted by respondent No. 1 but then he submits that there are certain facts in this regard showing that Returning Officer was bias against petitioner and he was doing favour to respondent No. 1.

35. To substantiate his argument Mr. Mangalam has submitted that order sheet of Returning Officer shows that he ordered for re-polling at some booths of different assembly constituency segments but he did not order for

re-polling of Booth No. 12 of Bathnaha assembly constituency segment. It is true that RW-68 ARO of Bathnaha assembly constituency segment in his evidence has stated that in initial counting ballot papers of booth No. 12 of this segment were not counted because out of two boxes one was found open and presiding officer in part-I of Form-16 had reported about booth capturing. It is also true that order sheets of R.O. (Ext. B) does not show that there was order of repolling at this booth and Ext. E which is account of ballot papers counted boothwise also shows that ballot papers of booth No. 12 were not counted in initial counting. RW-68 has said that instructions from Election Commission of India in this regard were sought. It is not clear what instructions were received. Assuming that there was no repolling for this booth I find that Part-I of Form-16 of this booth (marked Y/54) shows that ballot papers from Sl. No. 0741571 to 0742330 i.e. only 760 ballot papers were issued for this booth. Had there been any order of repolling for this booth there would have been cent per cent voting and all voters would have cast their votes in favour of petitioner even then the final result would not have been different considering the margin by which the petitioner has been defeated by respondent No. 1. The allegation of petitioner that Returning Officer was biased and favouring respondent No. 1 because respondent No. 1 was the candidate of the ruling party has not been found reliable. The petitioner, as stated above, in his election petition, has given the figures of the votes which he secured at different tables in different rounds of some assembly constituency segments and has pleaded that those figures have not been recorded in the result sheets and he further stated in his election petition that figures of votes secured by him at different counting tables were received by him by his counting agents who were maintaining proper account of votes secured by respondent No. 1 and he will produce those accounts in evidence which he did not. During the course of trial whenever petitioner saw some discrepancy in any document or in evidence adduced by respondent No. 1, he taking the advantage of that discrepancy started making out every time a new case which he has not pleaded in his petition. For example, he has taken the stand that final result sheet was first prepared by Returning Officer on the basis of which result of election was declared and thereafter roundwise result sheets were prepared by different AROs, check memos of two assembly constituency segments received in this Court are manufactured documents. ARO of Belsand assembly constituency segment took away 1000 ballot papers of petitioner which he had received at table No. 7 in 8th round of final counting of Belsand assembly constituency segment etc. The story that R.O. first prepared final result sheet does not appear convincing because in that case there

was no occasion for him to show the margin of votes less than one per cent of total valid votes polled necessitating him to seek instructions from Election Commission of India before making final declaration of result.

36. Mr. Mangalam, learned counsel for the petitioner, has relied upon a decision of the Apex Court in the case of T. A. Ahammed Kabeer Vs. A. A. Azeez and others, (2003) 5 SCC, 650 in which it was held that :

“26. The task before an Election Judge is ticklish. It is often urged and also held that the success of a winning candidate should not be lightly set aside and the secrecy of ballot must be zealously guarded. On account of a rigid following of these principles the Election Courts are inclined to lean in favour of the returned candidates and place the onus of proof on the person challenging the result of election, insisting on strict compliance with the rules of pleadings and excluding such evidence from consideration as is in divergence with the pleadings. However, what has so developed as a rule of practice should not be unduly stretched; for the purity of the election process needs to be preserved unpolluted so as to achieve the predominant goal of democracy that only he should represent the constituency who has been chosen by the majority of the electors. This is the purpose and object of the election law.”

He has further argued that election petitioner has been successful to bring on record that irregularities were committed in initial counting and final counting which is apparent from the facts that there is variation of figures shown to have been counted in initial counting and counted at the time of final counting, a number of Part-II of Form-16 have not been filled up, some Part-II of Form-16 have not been correctly filled up and roundwise result sheets of 8th round of Belsand assembly constituency segment has not been properly filled up and all these facts taken together make out a case for recount because the aforesaid irregularities show that there was breach of statutory duties cast on the RO. In support of his argument he has relied upon a decision of Apex Court in the case of Jibontara Ghatowar Vs. Sarbananda Sonowal and others, (2003) 6 SCC, 452. This case was in respect of rejection of some ballot papers which were in favour of election petitioner and the RO did not consider the prayer of petitioner for recount. Under these circumstances, it was held that the Returning Officer failed to discharge his statutory duty cast on him in deciding the prayer of petitioner for recount. So, under the circumstances that a case for recount was made out on the basis of averments made by election petitioner in his election petition and there was breach of statutory duties cast on the Returning Officer under section 63 of Conduct of Election Rules, it was held that a clear case for directing recount was made

out and it was further held that election petitioner was not indulging in a roving inquiry or trying to fish out the materials.

37. In the present case, as stated above, petitioner has not made out a case on the basis of averments which he has made in the election petition and he by taking advantage of some irregularities committed in the procedure of counting has tried to make out a new case every time which indicates that he filed the election petition with vague allegations but during the trial wanted the Court to make a roving inquiry in order to find materials in favour of petitioner. As stated above petitioner is not seeking the relief that entire election be declared void for holding fresh election on account of irregularities shown by him. He wants that election of returned candidates be set aside and order for recounting be passed and thereafter he be declared as returned candidate. For the relief which the petitioner has sought he must prove that irregularities were committed by non-compliance of some of the provisions of the Act and those irregularities have materially affected the result of the returned candidate. It is own admission of petitioner that he filed a petition (Ext. 1) before the Returning Officer for recount. A mere perusal of Ext. 1 it shows that in this petition he simply stated that in the last round of final counting because of deployment of ARO under a conspiracy he had been defeated by a narrow margin of votes. He further stated in this application that as per his apprehension he during counting used to inform the observers about the irregularities. In the last para he stated that he had made complaint to Chief Electoral Officer, New Delhi and Chief Electoral Officer, Bihar and had requested them for recount. He further stated that till the order of recount he would be sitting on fast till death. This application clearly shows that when he found that he was defeated in election he filed this petition. It is nowhere the case of petitioner that during the counting he made any written complaint to any authority about the irregularity. The statement of petitioner that he made oral complaint has been denied by the election, observer and Returning Officer. Admittedly, the election observer was not an officer of State Government because he in his evidence has said that at the time of election he was posted as Director in Tribal Research Training Institute, Pune. He, in his evidence, also said that during counting he did not receive any oral or written complaint from anybody about any irregularity committed in the counting. There is no reason to disbelieve this part of his evidence.

38. Mr. Mangalam, learned counsel for the petitioner, relying upon a decision of the Apex Court in the case of S. Raghbir Singh Gill Vs. S. Gurucharan Singh Tohra and others, 1980 Supp. SCC 53 has submitted that if petitioner failed to submit written complaint during the counting when irregularities were committed it can not

be said that he was not entitled for making a prayer for fresh recount because in this case it has been held that written protest is not a condition precedent for recount order. It is true that written complaint is not a condition precedent to seek recount but then when petitioner chose to file a written complaint before the Returning Officer making prayer for recount he should have atleast given some reasons for recount and only on the vague allegation that irregularities were committed in counting for which he had already made oral complaints, it can not be said that he had made complaint about the irregularities which he has mentioned in his election petition particularly when, the officials engaged in counting duty have denied to have received any oral complaint from the side of petitioner.

39. Considering the entire facts I find that petitioner has not made out a case that illegalities or irregularities as alleged in the election petition were committed during the procedure of counting of ballot papers which has materially affected the result of election. Both the issues are therefore, decided in negative and against the petitioner.

40. Issue No. (i) :—No defect in framing of the petition has been pointed out. Therefore, this issue is decided in affirmative.

41. Issue Nos. (iv) and (v) :—These issues were earlier decided as preliminary issues and were decided in negative and in favour of the petitioner, but at the time of final argument learned counsel of respondent No. 1 has again raised the issue that copy of election petition (Ext. A) served on respondent No. 1 is not a true copy and the election petition is liable to be dismissed under Section 86 of the Act for non-compliance of provisions of Section 81(3) of the Act.

42. Mr. Sharma, learned counsel of respondent No. 1, has drawn my attention towards the evidence of petitioner in para-35 in which he has admitted that some paras of the copy of the election petition are blank. Relying upon a decision of the Apex Court in the case of Jagat Kishore Prasad Narain Singh Vs. Rajendra Kumar Poddar, AIR 1971 SC 342 he has submitted that discrepancies in the copy of election petition supplied to respondent No. 1 has misled respondent No. 1 and prejudiced his defence and because copy of petition supplied to respondent No. 1 is not true copy, therefore, there was failure of compliance of Section 81(3) of the Act and petition is liable to be dismissed on this ground alone under section 86(1) of the Act. Mr. Mangalam opposing this submission has also relied upon a decision of Apex Court in the case of T. M. Jacob Vs. C. Paulose and others (199) 4 SCC 274 and has submitted that true copy of election petition within the meaning of section 81(3) of the Act does not mean that it should be exact copy of the original petition and if there is no variation of vital nature which can mislead any

person to understand the contents of petition it can not be a case of failure of provision of section 81(3) of the Act. I do not want to discuss this issue as to the supply of true copy of election petition in detail here again because, as stated above, this matter along with other issues has already been decided when preliminary objection of respondent No. 1 on the maintainability of election petition was considered and decided by a detailed order dated 6-9-2001 observing that "respondent No. 1 has not disclosed any discrepancy in the copy of election petition supplied to him and original election petition and he has simply stated that such discrepancy will be demonstrated in this Court at the time of arguing the preliminary objection petition but during the course of argument also not a single discrepancy of such nature was pointed out. In absence of stating any discrepancy between the true copy and the original election petition it is very difficult to say that whether there is any discrepancy between the two and if it is there whether it is clerical or typographical or it is insignificant or it has caused prejudice to respondent No. 1. I therefore find that this objection is also without any merit."

I do not agree with the submission of Mr. Sharma that at that time written statement on behalf of respondent No. 1 was not filed and copy of election petition supplied to respondent No. 1 was not marked Ext. Admittedly, at that time when preliminary objection was raised on behalf of respondent No. 1 he was in possession of copy of election petition which was supplied to him earlier. These issues are therefore decided in negative and in favour of the petitioner.

43. Issue Nos. (ii), (vii) and (viii) :— Considering the entire materials on record I find that petitioner has got no valid cause of action to sue and he is not entitled to any relief as claimed for.

44. In the result, this election petition of petitioner is on contest dismissed. Parties to bear their own costs.

Sd/-

M. L. VISA

Patna High Court;

Dated the 20th January, 2004

R. K. PATHAK (AFR)

[No. 82/BR/(3/99)/2002]

By Order,

ANAND KUMAR, Director (Admn.)-Cum-Principal Secy.

नई दिल्ली, 4 जून, 2004

आ. अ. 31.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग एतद्वारा

निर्वाचन अर्जी सं. 6/99 में दिये गये उच्च न्यायालय, पटना के तारीख 9-2-2004 के आदेश को प्रकाशित करता है।

(आदेश इस अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/बिहार/(6/99)/2004]

आदेश से,

आनन्द कुमार, निदेशक (प्रशासन)–सह-प्रधान सचिव

New Delhi, the 4th June, 2004

O.N. 31.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes Order dated the 9th February, 2004 of the High Court of Judicature at Patna in Election Petition No. 6 of 1999.

IN THE HIGH COURT OF JUDICATURE AT PATNA
E. P. NO. 6 OF 1999

Vijay Krishna Vs. Nitish Kumar & Others

185. 9-2-2004

Counsel on behalf of both the parties are present.

Learned Counsel of contesting respondent No. 1 and learned counsel of respondent Nos. 6 & 8 both relying on a decision of the Apex Court in the case of Loknath Padhan Vs. Birendra Kumar Sahu (AIR 1974 SC 505) submit that 13th Lok Sabha for which respondent No. 1 was returned candidate from 18-Barh Parliamentary Constituency has been dissolved and the election petition of election petitioner has become infructuous as the election petitioner has challenged the election of respondent No. 1 on the ground of irregularities committed in the counting of ballot papers which includes the counting of ballot papers of those ballot boxes whose seals were found damaged in favour of respondent No. 1 and by mixing some ballot papers of petitioner in the bundles of ballot papers of respondent No. 1 and counted in his favour.

Learned counsel of election petitioner admits that 13th Lok Sabha has been dissolved and he also concedes the applicability of the decision cited by the learned counsel of respondent Nos. 1, 6 & 8 to the present case.

Considering the aforesaid facts this election petition is dismissed as being infructuous with no order as to costs all throughout.

Sd/-

M. L. VISA

[No. 82/BR/(6/99)/2004]

By Order,

ANAND KUMAR, Director (Admn.)-Cum-Principal Secy.

नई दिल्ली, 14 जून, 2004

New Delhi, the 14th June, 2004

आ. अ. 32.—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13-क की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग मध्य प्रदेश सरकार के परामर्श से एतद्वारा श्री डी. एस. माथुर, आई. ए. एस. के स्थान पर श्री सेवा राम, आई. ए. एस. (एम. पी.-84) को उनके कार्यभार ग्रहण करने की तारीख से आगामी आदेशों तक के लिए, मध्य प्रदेश राज्य के मुख्य निर्वाचन अधिकारी के रूप में नामित करता है।

2. श्री सेवा राम, मध्य प्रदेश सरकार के अधीन सभी पदभार या किसी कार्य के पदभारों को तत्काल सौंप देंगे या धारण करना समाप्त कर देंगे, जो कि वे ऐसा पदभार ग्रहण करने से पहले धारण कर रहे थे।

3. श्री सेवा राम, मुख्य निर्वाचन अधिकारी, मध्य प्रदेश के पद पर कार्य करते हुए मध्य प्रदेश सरकार के अधीन किसी भी प्रकार का कोई अतिरिक्त कार्यभार ग्रहण नहीं करेंगे सिवाय इसके कि उनको राज्य सचिवालय में निर्वाचन विभाग के प्रभारी, सरकार का सचिव पदाभिहित किया जायेगा।

[सं. 154/म. प्र./2004-का. प्रशासन]

आदेश से,

नरेन्द्र ना. बुटोलिया, अवर सचिव

O.N. 32.—In exercise of the power conferred by sub-section (I) of section 13A of the Representation of the People Act, 1950 (43 of 1950) the Election Commission of India in consultation with the State Government of Madhya Pradesh hereby nominates Shri Sewa Ram, IAS (MP : 84) as the Chief Electoral Officer for the State of Madhya Pradesh with effect from the date he takes over charge and until further orders *vice* Shri D. S. Mathur, IAS.

2. Shri Sewa Ram shall cease to hold and hand over forthwith charge of all or any charges of work under the Government of Madhya Pradesh, which he may be holding before such assumption of office.

3. Shri Sewa Ram while functioning as Chief Electoral Officer, Madhya Pradesh shall not hold any additional charge whatsoever under the Government of Madhya Pradesh except that he should be designated Secretary to the Government in charge of Election Department in the State Secretariat.

[No. 154/MP/2004-P. Admn.]

By Order,

NARENDRA N. BUTOLIA, Under Secy.